1596.

SUPREME COURT OF THE UNITED STATES.

No. 112.

WILLIAM LIVINGSTON AND EBENEZER N. CALEF, APPELLANTS,

vs.

WILLIAM W. WOODWORTH, ADMINISTRATOR OF WILLIAM WOODWORTH, DECEASED, JAMES G. WILSON, ARTEMAS L. BROOKS, AND IGNATIUS TYLER.

APPEAL FROM THE CIRCUIT COURT, U. S., FOR THE DISTRICT OF MASSACHUSETTS.

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[SEAL.] UNITED STATES OF AMERICA,
Massachusetts district.

1851, May term.

At a circuit court of the United States, begun and holden at Boston, for the first circuit and district of Massachusetts, on Thursday, the fifteenth day of May, in the year of our Lord one thousand eight hundred and fifty-one.

Before the honorable Levi Woodbury, associate justice, honorable Peleg Sprague, district judge.

WILLIAM W. WOODWORTH et als., defendants, vs. WILLIAM LIVINGSTON et al., respondents. } In equity.

The bill of complaint in this cause was filed in the clerk's office on the tenth day of July, A. D. eighteen hundred and forty-eight, and is in the words following, to wit:

To the judges of the circuit court of the United States, for the district of Massachusetts.

William W. Woodworth, of Hyde Park, in the northern district of New York, esquire, as he is the administrator of William Woodworth, late of the city of New York, in the southern district of New York, gentleman, deceased, and as he is the grantee of certain exclusive privileges, under and pursuant to an act of Congress, as is hereinafter fully set forth, and James G. Wilson, of the city of Philadelphia, in the eastern district of Pennsylvania, gentleman, and Artemas L. Brooks and Ignatius Tyler, of the city of Lowell and county of Middlesex, and Commonwealth of Massachusetts, copartners in the business of planing boards by machinery, bring this bill of complaint against William Livingston and Ebenezer N. Calef, of said Lowell, copartners in said business of planing boards by machinery, in said Lowell.

And thereupon your orators complain and say, that William Woodworth, a citizen of the United States, being the true and original inventor of a new and useful machine, not known or used before his application for letters patent, did apply to the Secretary of State of the United States for letters patent for such invention; and having fully and in all respects complied with all the requisitions of the laws in that behalf, and especially having made oath that he verily believed himself to be the true inventor and discoverer of such machine; and having also paid into the Treasury of the United States the sum of thirty dollars, and delivered a receipt for the same, and presented to the Secretary of State of the United States a petition, setting forth his desire to

obtain an exclusive property in the said machine, and praying that letters patent might for that purpose be granted to him; and having also delivered and filed in the office of the said Secretary of State a written description of his said invention and discovery, and of the manner of using the same, and accompanied the same with drawings thereof and written references, in such full, clear, and exact terms as to distinguish the same from all other things before known, and so as to enable any other person, skilled in the art with which the said invention is most nearly connected, to make and use the same, which said description was duly signed by the said William Woodworth, and attested by two witnesses; and the said Secretary of State did thereupon cause letters patent to be made out in the name of the United States of America, in due form of law in all respects, bearing date on the twenty-seventh day of December, in the year of our Lord one thousand eight hundred and twenty-eight, whereby was granted to the said William Woodworth, his heirs, administrators, or assigns, for the term of fourteen years from the date thereof, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said machine, which is entitled in the said letters patent, "a new and useful improvement in the method of planing, tonguing, grooving, and cutting into mouldings, or either, plank, boards, or any other material, and for reducing the same to an equal width and thickness, and also for facing and dressing brick, and cutting mouldings on, or facing metallic, mineral, or other substance;" and the said letters patent having been duly approved by the Attorney General, and signed by John Quincy Adams, the President, and countersigned by Henry Clay, the secretary of State of the United States, and the said Secretary of State having caused the seal of the United States to be thereto affixed, and the same having been duly recorded, were issued and delivered unto the said William Woodworth; all which will more fully appear in and by the said letters patent, or a copy thereof, duly certified by the Commissioner of Patents, to which, for greater certainty, your orators crave leave to refer.

And your orators further show unto your honors, that afterwards, on or about the ninth day of February, in the year of our Lord eighteen hundred and thirty-nine, the said William Woodworth departed this life at the city of New York, aforesaid, where he was then resident; and thereupon afterwards, on or about the fourteenth day of February, in the year of our Lord eighteen hundred and thirty-nine, administration of the goods and estate which were of the said William Woodworth, at the time of his decease, was duly granted by the surrogate of the county of New York, having jurisdiction in the premises, unto your orator, William W. Woodworth, son and one of the heirs of the said William Woodworth, deceased, and said William W. Woodworth thereupon took upon himself that trust.

And afterwards, on or about the twentieth day of July, in the year of our Lord eighteen hundred and forty-two, William W. Woodworth, in his said capacity, made application in writing to the Commissioner of Patents of the United States, setting forth that he desired an exten-

sion of the said letters patent, and the grounds thereof; and having paid the sum of forty dollars to the credit of the treasury of the United States, and the said Commissioner having caused public notice of such application to be given, according to law, and the Secretary of State and the Commissioner of Patents, and the Solicitor of the Treasury of the United States having met, as the board designated by law, for such purpose, on the first day of September, in the year last aforesaid, at the Patent office in Washington, being the time and place appointed for such meeting in the said public notice, did then and there proceed to hear and consider the said application, and on divers days and times to which such hearing and consideration were duly continued by adjournment, did hear and consider the same, and such proceedings were then and there had, that afterwards, on or about the sixteenth day of November, in the year last aforesaid, the said board did adjudge and certify, in writing, that, upon hearing of the said matter, it appeared to their full and entire satisfaction, having due regard to the public interest therein, that it is just and proper that the term of the said letters patent should be extended, by reason that the patentee, without neglect on his part, had failed to obtain, from the use and sale of his invention, a reasonable remuneration for the time, ingenuity, and expense bestowed upon the same, and the introduction thereof into use; which said certificate, having been duly signed by all the members of the said board, the Commissioner of Patents did thereupon, according to law, renew and extend the said patent, by making a certificate of such extension thereon for the term of seven years, from and after the expiration of the said term of fourteen years, for which the said patent was originally granted; which last mentioned certificate, together with the said certificate of the said board, having been duly entered of record, your orators crave leave to refer to duly certified copies thereof.

And your orators further show unto your honors, that the said William W. Woodworth, administrator as aforesaid, did, on the seventh of December, in the year eighteen hundred and forty-two, grant to your orators, said Brooks and his assigns, the exclusive right to construct and use twenty planing machines, according to the invention of the said William Woodworth, in the county of Middlesex, and Commonwealth of Massachusetts, (excepting in the towns of Cambridge, Watertown, Medford, Malden, and Rockbottom,) during the residue of the term of the extension of said patent, as aforesaid, to wit, until the twenty-seventh day of December, in the year eighteen hundred and forty-nine; which grant is duly recorded in the Patent office at Washington.

And your orators further show unto your honors, that on or about the second day of January, in the year of our Lord one thousand eight hundred and forty-three, the said William W. Woodworth, being satisfied of the truth of the facts stated and set forth in the disclaimer next hereinafter mentioned, did make disclaimer of all that part of the claim which is contained in the said letters patent which relates to the use of circular saws for reducing floor plank and other materials to a width; and the same having been duly filed and recorded in the Patent office, your orators crave leave to refer to a duly certified copy thereof.

And your orators further show unto your orators, that on or about the tenth day of January, last mentioned, said William W. Woodworth, in his said capacity, by a deed bearing date on the said second day of January, but not delivered until after the making and filing of the disclaimer aforesaid; which said deed your orators will here in court produce, and for greater certainty crave leave to refer thereto, conveyed to certain persons, named Washburn and Brown, the exclusive right to make, use, and vend the said patentee's machines in the counties of Suffolk and Norfolk, and in the towns of Charlestown, Cambridge, Watertown, West Cambridge, Malden, and Rockbottom, in the county of Middlesex, all in the said district of Massachusetts; limiting, however, the number of machines to be by them used, sold, and constructed, to fifty, and reserving to said William W. Woodworth license to construct the said machines in the territory last mentioned, to be used elsewhere; and the said grant has been duly recorded in the Patent office at Washington, as is required by law.

And your orators further show to your honors, that afterwards, on or about the eleventh day of January, in the year of our Lord one thousand eight hundred and forty-four, the said William W. Woodworth, by a deed of that date, which has been duly recorded in the Patent office at Washington, did grant, assign, and convey to your orator, the said James G. Wilson, all the right, title, and interest which said Woodworth, in his said capacity, then had in and to the said exclusive privileges, saving and excepting all the right to make, use, and vend the said patented machines in the State of Vermont, and the said grant has been duly recorded in the Patent office at Washington.

And your orators further show, that by an act of Congress passed on the twenty-sixth day of February, in the year eighteen hundred and forty-five, the said original patent was extended for the term of seven years from and after the twenty-seventh day of December, in the year eighteen hundred and forty-nine; and your orators crave leave to refer to the certificate of extension, or a duly certified copy thereof, made by the Commissioner of Patents under the authority of the act aforesaid.

And your orators further show unto your honors, that afterwards, doubts being entertained of the correctness and accuracy of the said specification, and the said letters patent being found to be inoperative, the same were duly surrendered on account of the said defective specification, and such surrender having been accepted by the Commissioner of Patents, the said Commissioner did, in due form of law, issue to the said William W. Woodworth, administrator as aforesaid, letters patent bearing date on the eighth day of July, in the year eighteen hundred and forty-five, granting to the said William W. Woodworth in trust for the heirs at law of the said William Woodworth, their administrators and assigns, for the residue of the term of twenty-eight years from the said twenty-seventh day of December, in the year eighteen hundred and twenty-eight, the exclusive right of making, using, and vending to others to be used, the improvements claimed and described in the amended specification to the letters patent last aforesaid annexed,

to which said last mentioned letters patent, or a duly certified copy thereof, your orators crave leave to refer as a part of this their bill.

And your orators further show unto your honors, that since the issuing of the said new letters patent to William W. Woodworth, the said Woodworth by his deed, dated on the ninth day of July, in the year eighteen hundred and forty-five, and recorded in the Patent office aforesaid, granted, assigned, and confirmed into your orator, the said James G. Wilson, and his assigns, all the right and title acquired by him in and by the issue of the said letters patent with the amended specification as aforesaid.

And your orators further show unto your honors, that the said Brooks did by his deed, dated the twentieth day of July, in the year eighteen hundred and forty-seven, and recorded in the Patent office of the United States, assign to said Tyler one-half of his, the said Brooks', right, title, and interest in the said patent, for the term ending on the twenty-seventh day of December, eighteen hundred and forty-nine, as aforesaid, to be used only within the limits of the said city of Lowell, and not elsewhere; and your orators crave leave to refer to the original deed of indenture between the said William W. Woodworth, administrator, and the said Brooks; and to the original deed from the said Brooks to the said Tyler; and to a duly certified copy of the said deed from said Woodworth to said Wilson, as parts of this bill of complaint.

And your orators further show unto your honors, that the said James G. Wilson by his deed, delivered on or about the twentieth of May, in the year eighteen hundred and forty-eight, and duly recorded in the Patent office at Washington, did assign and confirm, to the said Artemas L. Brooks and his assigns, the exclusive right of constructing and using twenty planing machines within the county of Middlesex, (excepting the towns before mentioned,) constructed according to the letters patent granted to said Woodworth with the amended specification aforesaid, and did give and grant authority to your orator, the said Brooks, in said Wilson's name, to execute all such deeds of confirmation to the proprietors or assignees of any of the rights and privileges aforesaid within the county of Middlesex, as he should deem fit and proper. And your [orator,] the said Brooks, by his deed, dated the first day of July, in the year eighteen hundred and forty-eight, and duly recorded in the Patent office in Washington, did grant and confirm unto the said Tyler, as well in the name and behalf of the said James G. Wilson as in his proper name and behalf, all the rights and privileges described in the deed of the said Brooks to said Tyler, dated the twentieth day of July, eighteen hundred and forty-seven.

And your orators further show unto your honors, that the said William Livingston and the said Ebenezer N. Calef are now using, within the limits of the said city of Lowell aforesaid, one of the said machines, substantially the same in construction and mode of operation as the planing machine in the said letters patent mentioned, the exclusive right to make, use, and vend which, within the said limits, is by law vested in your orators, and that the said defendants have used the same for some time past, but how long, in particular, your orators are not

informed and cannot set forth, but pray that the said defendants may discover and set forth the same; and thereby the said defendants have and still do infringe upon the exclusive privilege intended to be secured to your orators by the said letters patent.

And your orators further show unto your honors, that heretofore, to wit, viz., at the term of this honorable court begun and holden at Boston, within and for the district of Massachusetts, on the fifteenth day of October, in the year of our Lord one thousand eight hundred and forty-three, certain persons, named Washburn and Brown, impleaded one James Gould in an action at law, wherein they declared against him, in a plea of trespass on the case, for a violation of the exclusive privileges of the said Washburn and Brown, secured to them by the letters patent and grant aforesaid, by using a machine substantially the same in its construction and mode of operation as the said planing machine, invented by the said William Woodworth; and thereupon, the said suit at law having been duly continued from said term to the term begun and holden at Boston, within and for the said district of Massachusetts, on the fifteenth day of May, in the year of our Lord one thousand eight hundred and forty-four, the said Gould having pleaded that he was not guilty in manner and form as the said plaintiffs have declared against him, and issue being joined thereon, the cause was committed to a jury, who returned their verdict therein upon oath, and found that the said Gould was guilty in manner and form as the said plaintiffs had declared against him, and assessed damages in the sum of fifty dollars. And afterwards, at the same term of the said court, a motion for a new trial of the said action having been made by the said Gould, and overruled by the court, judgment was rendered on the said verdict in favor of the said plaintiffs for their aforesaid damages and costs.

And your orators further show unto your honors, that heretofore, to wit, at the term of this honorable court begun and held at Boston aforesaid, within and for the district of Massachusetts, on the fifteenth day of October now last past, the said William W. Woodworth impleaded Rodolphus C. Edwards, James H. Edwards, and Cyrus Smith in an action at law for a violation of the aforesaid exclusive privileges, secured to the said William W. Woodworth, by using a machine substantially the same in its construction and mode of operation as the said planing machine invented by William Woodworth; and such proceedings in the said suit were afterwards had, that at the same term of the court the said Edwards and others having pleaded that they were not guilty in manner and form as the plaintiffs have declared against them; and issue being joined thereon, the said cause was committed to a jury, who returned a verdict therein upon oath, and found that the said Edwards, Edwards, and Smith were guilty in manner and form as the said plaintiffs had thereof declared against them, and assessed damages therein in the sum of five hundred dollars. And afterwards, at a term of this court held on the fifteenth day of May, in the year eighteen hundred and forty-eight, a motion for a new trial of the said cause having been made by the said Edwards and others, was overruled by the court, and judgment was rendered on the said verdict in

favor of the said plaintiffs in said cause, for their said damages and costs. And your orators have requested the said Livingston and Calef to desist and refrain from further using the said machine, and to account with and pay to your orators the damages sustained by your orators by reason of the unlawful use of the said machine by the said defendants, or the profits made by them by such use.

But now, so it is, may it please your honors, that the said Livingston and Calef have combined and confederated together to resist, embarrass, and destroy the exclusive privileges secured to your orators as aforesaid, and to use the said patented machines without the license of your orators, and in violation of their rights; all which is contrary to equity and good conscience, and in contravention of your orator's just rights in the premises.

To the end, therefore, that the said defendants may, if they can, show cause why your orators should not have the relief hereby prayed; and may upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories, hereinafter numbered and set forth, as by the note here underwritten they are respectfully required to answer, that is to say:

1. Whether the said letters patent were granted and issued as above stated?

2. Whether the said letters patent were renewed and extended, as is above stated?

3. Whether the disclaimer aforesaid was filed, as is above stated?

4. Whether the grants by the said William W. Woodworth to the said Washburn and Brown was made, as is above stated?

5. Whether the grants by the said W. W. Woodworth to said Wilson were made respectively by him, as is above stated?

6. Whether the said actions at law were commenced and prosecuted, and the said verdicts and judgments recovered, as is above stated?

7. Whether the said defendants have at any time, and when, and during what period of time, either severally and each by himself, or jointly, with any and what other person or persons, used any planing machine, and where; and whether or no the same was not substantially the same in its construction and mode of operation as the said planing machine of the said William Woodworth, and how the same differed therefrom, if at all?

8. Whether or no such planing machine was used to plane boards for the use of the said defendants, or either of them, or for customers and the public generally; and if the former, whether or no any, and if any, how much cost and expense was saved by means of such machine; and if the latter, how much profit has been realized therefrom, and what quantities of boards or other material have been so planed, and at or after what rates or prices, and what expenses were incurred in the operation of planing?

9. Whether the grant by the said W. W. Woodworth to the said Brooks was made as is above stated?

10. Whether the grants by the said Brooks to the said Tyler were made as is above stated?

11. Whether the grant or confirmation by the said Wilson to the said Brooks was made as is above stated?

And that the said defendants may answer the premises, and that they may be decreed to account for and pay over to your orators all such gains and profits as have accrued to them from using the said machines, since the expiration of the said original letters patent; and that they may be restrained by an injunction issuing out of this honorable court, or issued by one of your honors, according to the form of the statute in such case made and provided, from using or vending any one or more of the said machines, substantially the same in its construction and mode of operation as the said patentee's planing machine; and that the machine or machines now in the possession of the said defendants or under their control, may be destroyed or delivered up to your orators; and for such further or other relief as the nature of this case may require, and to your honors may seem meet. May it please your honors to grant unto your orators not only a writ of injunction conformable to the prayer of this bill, but also a writ of subpœna, directed to William Livingston and Ebenezer N. Calef, of Lowell, in the district of Massachusetts, copartners in the business of planing boards by machinery, and commanding them and each of them to appear and answer unto this bill of complaint, and to do and receive what to your honors shall seem meet

B. R. CURTIS, *for complts.*
C. P. CURTIS,
Of counsel with the plaintiffs.

On this tenth day of July, A. D. 1848, personally appeared in open court said Brooks and Tyler, and severally made oath, that the facts set forth in said bill, as of their own knowledge are true, and so far as stated on the information of others they believe them to be true.

Attest, JAMES B. ROBB, *Clerk.*

This bill of complaint was entered at the May term of this court, A. D. 1848, when the parties appeared by their respective counsel, and on motion of complainants for a temporary injunction, the following proofs were exhibited to the court, viz:

Circuit court of the United States, for the first circuit and district of Massachusetts, in chancery.

WILLIAM W. WOODWORTH and others
vs.
WILLIAM LIVINGSTON and another.

I, William Livingston, one of said defendants, on oath depose and say, that defendants are now using as copartners in the planing business one of the Hutchinson machines, so called, under a valid title derived from said Hutchinson, the patentee. They own said Hutchinson's patent for the city of Lowell; they have run said machine, as

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they believed, until the commencement of this suit, in virtue of their own rights and not in violation of any rights of the plaintiffs; all the planing done by the defendants has been with the full knowledge of Artemas L. Brooks, one of the plaintiffs, having the principal interest in this suit, as defendants believe; the planing business which defendants now have, has grown up with the knowledge and implied consent of said Brooks; to put a sudden stop to it would be a public injury with no equivalent benefit to the plaintiffs. It is not, and never was, the intention of the defendants to violate the rights of the plaintiffs; it is their intention to settle, or to try this suit with all convenient despatch; they are willing, and hereby offer, to give ample security under the direction of the court to the plaintiffs, to account and pay over to them all damage which may be done to the plaintiffs by the defendants in the continuance of their business of planing, until the first day of the next October term of this court, when, if the case be not settled, the defendants will be ready for a trial upon the merits, or submit to a temporary injunction without hearing.

Said Hutchinson patent bears date the sixteenth day of July, A. D. 1839. The original patent is not in the possession of the defendants, and it is not in their power to file a certified copy thereof within the time limited by the court for filing this affidavit; but this deponent does not believe that defendants are violating any valid rights of the plaintiffs.

WM. LIVINGSTON.

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss.

Subscribed and sworn to this twentieth day of July, A. D. 1848, before me.

MARCUS MORTON, JR.,
Justice of the peace.

Circuit court of the United States, for the first circuit and district of Massachusetts.

WOODWORTH and others
vs.
LIVINGSTON and another.

I, Royall Call, of Lowell, of lawful age to testify, do depose and say, that formerly, from about the fall of 1841 to April, 1844, I was partner with William Livingston in the business of planing boards in Lowell, and used the Hutchinson patent planing machine. At the same time Mr. Artemas L. Brooks also was engaged in the same business, using the Woodworth patent, as I understood. It was well known to Mr. Brooks that I was engaged in that business. We entered into an agreement as to the prices that we would charge for the work, that we might not undersell each other. When I made proposals to him for that purpose he gave me the prices, and said he should adhere

to them if I did. He complained that Pickering and Brown, who had worked our machine for about the period of a year and a half before we purchased of them, did not adhere to any fixed prices, and so injured the business. Mr. Brooks made no complaint or objection to our running the machine.

ROYALL CALL.

MIDDLESEX, *ss:* *July* 13, 1848.

Sworn to by Royal Call, before me—

THOS. HOPKINSON,
Jus. Peace.

UNITED STATES CIRCUIT COURT,
District of Massachusetts, ss.

WOODWORTH and al.
vs.
LIVINGSTON and al.

I, E. N. Calef, of Lowell, one of the defendants in the matter above named, on oath say, that prior to the early part of the year 1844, I had been about eight and ¾ years in the employment of Artemas L. Brooks, one of the plaintiffs, running his planing machine for the princi part of that period. He then used the Woodworth patent, so called. At the time above named I purchased of Royal Call his interest in the business of planing boards with said Wm. Livingston, and in the machine and patent right now used by us, known and called the Hutchinson patent. Mr. Brooks had long known the machine, and the business of said Call and Livingston. He knew also my intention to make the purchase, before I made it; and after I had made the purchase, but before I took possession, we held a conversation together on the subject of a large job of work which we proposed to take of the Lawrence Manufacturing Co. I think he first proposed the arrangement to me. He said he should not be able to take and perform so large a contract, and desired us, Livingston and Calef, to take a part of it; we did so, agreeing together upon the price. We often conversed together, and agreed upon, and communicated with each other on the snbject of prices to be charged for our work, so as to not underbid each other. This continued till within about a year from this date; and during all this time said Brooks never objected to our running our said machine, nor gave any notice that he thought we violated any right of his, or infringed upon the Woodworth patent. He gave me no warning against making said purchase, and there investing all, and more than all, the property that I possessed; and I have under his eye (and as I believe, as he could not but understand from his knowledge of my pecuniary condition,) continued to invest the principal part of my property and earnings in the same business. Within the last two months said Brooks has employed me, in one instance, to do a job of work for him on our said machine.

E. N. CALEF.

MIDDLESEX, *ss.*

July 20, 1848.

Sworn to by said E. N. Calef, before me.

THOS. HOPKINSON,
Justice peace.

UNITED STATES CIRCUIT COURT,
Massachusetts district, May term, 1848.

WM. W. WOODWORTH et al.
vs.
WM. LIVINGSTON et al.

I, Artemas L. Brooks, on oath depose and say, that I am one of the complainants in the above entitled cause; that the said Calef left my employment, according to my time-book, on the last day of March, 1844; that I had no conversation whatever with the said Calef on the subject of his buying from said Call until after he had purchased the same, and I have no recollection of having at any time had conversation with him about taking a job together. At the time the said Calef purchased of Call, the suit Washburn and al. vs. Gould was pending and about to be tried, and the said Calef knew the said suit was then pending. The said Gould is a relation of this deponent, and was in the habit of talking to this deponent about the case before it was tried, and, from his statements, this deponent was led to doubt, and did doubt, the validity of the Woodworth patent, and for that and other reasons was not willing to take any steps to vindicate his right at that time. Immediately after the verdict in favor of the patent in the said Gould's case, this deponent called on Livingston and Calef and forbid each of them separately to run the said machine; soon after this they both came to this deponent's house in Tewksbury, and there asserted that this deponent's right was good for nothing; that if strongly opposed it would break down, and they should resist to the utmost; he, Livingston, said he had money enough, and he would never stop till he had broken the patent down; this deponent had no knowledge of law, and a great dread of litigation; his circumstances at that time were embarrassed, and neither then nor for some years afterwards did he feel able to encounter William Livingston in a law suit about a patent; from time to time he heard reports unfavorable to the patent, and until the summer of the year 1847, this deponent was neither able nor willing to enter into litigation on the subject; but, both at the interviews first above mentioned, and at the said interview at his house, he did distinctly declare to the said Livingston and Calef that they were violating his rights, and that it was unjust for them to continue to run the said machine without making him compensation; and he has never, at any time, said or done any thing to the effect that he was willing they should continue to run without making him a proper compensation therefor. This deponent has once or twice had conversation

with the said Calef about prices to be charged for planing, but not within three years, and never in the way of making any agreement with them, but simply with a view that neither party should underbid the other; and he denies that within two months, or at any time, he has employed the said Caleff to do a job of work; on or about the 12th day of May last, as this deponent is informed, a person in his employment sent a small quantity of lumber to the said Caleff to be planed, but this was done without the knowledge of the deponent, and without any authority from him.

A. L. BROOKS.

BOSTON, *district of Massachusetts.*

This 22d July, 1848, personally appeared before me the above named deponent, and made oath that the matters and things above stated are true, so far as the same are stated on his own knowledge, and so far as the same are stated on the information of others he believes them to be true.

EDWARD G. LORING,
Commissioner.

CIRCUIT COURT OF U. S.,
Massachusetts district.

WILLIAM WOODWORTH AND AL.
vs.
WILLIAM LIVINGSTON AND AL.
} In equity.

I, Charles W. Brown, of Boston, do, on oath, depose and say, that I am familiar with the invention of William Woodworth in the planing machine well known in the United States by the name of "Woodworth's planing machine;" that I have practically carried on the business of planing with said machines in the city of Boston during several years past, and am well acquainted with the principles of said invention and the component parts and construction of the said machine. I further say, that about he sixth of June last I visited the premises occupied by the above named defendants in the city of Lowell, and there saw in operation a planing machine substantially the same in construction and mode of operation as those which are built according to the invention of William Woodworth, as described in the specification of the renewed letters patent issued by the Commissioner of Patents in eighteen hundred and forty-five; it was one of a class of machines which go by the name of the Stone machines, several of which have been built, as I have been informed, by Joel Stone, and corresponded in all important particulars with a machine which was the subject of a trial before the circuit court of the United States, in which William Washburn and myself were plaintiffs and James Gould was defendant, in eighteen hundred and forty-four.

It also corresponded with a machine which was the subject of a

trial before the said court in the present year between *W.* William W. Woodworth and Rodolphus Edwards and others, except in the mode of feeding; in the Woodworth machine, and in the machine which I saw at the defendants' mill, the feeding is effected by means of rolls; but in the machine for the use of which the suit against said Edwards was brought, the feeding was by a sectional carriage.

CHARLES W. BROWN.

DISTRICT OF MASSACHUSETTS.

July 13, 1848, personally appeared before me, the above named Brown and made oath that the matters and facts stated above are true, so far as the same are stated on his own knowledge, and that so far as the same are stated on the information of others he believes them to be true.

$1 00 fee. EDWARD G. LORING,
Commissioner.

Whereupon the court passed the following order, to wit:

CIRCUIT COURT OF U. S.,
Mass. dist., ss:

May term, 1848, 24th July, 1848.

WILLIAM W. WOODWORTH et al.
vs. } In equity.
WM. LIVINGSTON et al.

This cause came on to be heard on motion of the plaintiffs for a temporary injunction, and was argued by counsel; and thereupon, upon consideration thereof, it is ordered that an injunction issue, to continue until the further order of the court, restraining the respondents from using or vending any one or more of the machines substantially the same in its construction and mode of operation as the machine patented by William Woodworth, mentioned and set forth in the complainants' bill of complaint.

By the court. JAMES B. ROBB, *Clerk.*

And on the twenty-fourth day of July, A. D. 1848, the following writ of injunction was issued accordingly, viz:

UNITED STATES OF AMERICA,
Massachusetts district, ss:

The President of the United States of America, to William Livingston and Ebenezer N. Calef, of Lowell, in the county of Mid-
[SEAL.] dlesex and Commonwealth of Massachusetts, copartners in the business of planing boards by machinery at said Lowell.

Whereas, William W. Woodworth, of Hyde Park, in the northern district of New York, esquire, as he is the administrator of William

Woodworth, late of the city of New York, in the southern district of New York, gentleman, deceased, and James G. Wilson, of the city of Philadelphia, in the eastern district of Pennsylvania, gentleman, and Artemas L. Brooks and Ignatius Tyler, of said Lowell, copartners in the business of planing boards by machinery, have exhibited their bill of complaint before the justices of our circuit court of the United States for the first circuit, begun and holden at Boston, within and for the district of Massachusetts, on the fifteenth day of May, A. D. 1848, against you, the said Livingston and Calef, praying to be relieved touching the matter therein complained of; and whereas, by an order from said court, made on the twenty-fourth day of July, A. D. 1848, it was ordered that a writ of injunction issue, under the seal of the said court, to restrain you, and each and every of you from doing all the matters and things, from the doing of which you are prayed to be restrained in said bill, according in full with the prayer of said bill.

We, therefore, in consideration thereof, enjoin and command you, each and every of you, that from and immediately after the receipt and notice of this our writ by you, you shall not use or vend any one or more of the machines substantially the same in its construction and mode of operation as the machine patented by William Woodworth, mentioned and set forth in said bill, until the further order of this court.

Whereof you are not to fail on pain of ten thousand dollars, to be levied on your and each of your goods, chattels, lands, and tenements, to our use.

Witness the honorable Roger B. Taney, at Boston, this twenty-fourth day of July, in the year of our Lord one thousand eight hundred and forty-eight.

JAMES B. ROBB, *Clerk.*

LOWELL, *July* 25, 1848.

UNITED STATES OF AMERICA,
Massachusetts district, ss.

I hereby certify I have notified the within named respondents by giving to each of them, in hand, a true and attested copy hereof.

2 services and travelling,	$6 80
2 copies - - - - -	2 00
	$8 80

ISAAC O. BARNES, *Marshal.*

And afterwards, to wit, on the fourth day of September, A. D. 1848, the respondents file the following answer to complainants' bill, viz:

Circuit court of the United States, for the district of Massachusetts, in equity.

The joint and several answers of William Livingston and Ebenezer Calef, of Lowell, in said district, defendants, to the bill of complaint

of Wm. W. Woodworth, of Hyde Park, in the northern district of New York, administrator of William Woodworth, late of the city of New York; James G. Wilson, of Philadelphia, in the eastern district of Pennsylvania; Artemas L. Brooks and Ignatius Tyler, of said Lowell, complainants. These defendants, reserving all right of exception to said bill, for answer thereto say as follows:

1. In answer to the first interrogatory, each of these defendants says, that he has been informed and believes that said patent was granted as alleged; but for greater certainty refers to the same, or a certified copy thereof, to be produced by the plaintiffs.

2. In answer to the second interrogatory, each of these defendants says, that he has been informed and believes that said patent was renewed and extended, as alleged; but for greater certainty refers to the certified copy thereof, to be produced by the plaintiffs.

3. In answer to the third interrogatory, each of these defendants says, that he has no knowledge, information, or belief as to the matter inquired of in these interrogatories.

4. In answer to the fourth interrogatory each of these defendants says, that he has been informed and believes that some grant was made by said William W. Woodworth to said Washburn and Brown, as alleged, but he has no knowledge, information, or belief, as to its terms or effect.

5. In answer to the fifth interrogatory, each of these defendants says, that he has no knowledge, information, or belief, as to the grants by the said William W. Woodworth to said Wilson, inquired of in this interrogatory.

6 In answer to the sixth interrogatory each of these defendants says, that he has been informed and believes that said verdicts and judgments at law were recovered as alleged, but for greater certainty refers to the records of this honorable court.

7. In answer to the seventh interrogatory these defendants say, that they have used one planing machine a part of the time since April 1st, A. D. 1844, in their mill at said Lowell, and no more; and said Livingston says, that he, with one Royall Call, used one planing machine at said mill a part of the time, from the autumn of 1841, to April, 1844; and said machine, used by the defendants as aforesaid, is constructed according to the patent granted by the United States of America to James H. Hutchinson, for improvements in planing machines, dated July 16, A. D. 1839; and in regard to the combination of rotating planes, with pressure rollers, said machine is substantially like the machine specified in said Woodworth patent issued July 8th, A. D. 1845, but the same is not like any machine specified in the said Woodworth patent issued December 27, A. D. 1828, and these defendants refer to a certified copy of said Hutchinson patent, to be by them produced in court, as a part of this answer.

8. In answer to the eighth interrogatory these defendants say, that they have planed boards for themselves, for the purpose of sale, and for the public generally; and said Livingston and Calef have planed

on their own account, for sale, 1,300,000 feet, on which they have realized a profit of $650 00; and they have planed for the public 2,000,000 feet, at the average rate of two dollars a thousand feet, and at the average expense of one dollar and fifty cents a thousand feet; and the whole profit realized by them from the use of said machine since April 1st, 1844, is two thousand dollars, and no more, according to their best knowledge and belief; and said Livingston says, that the whole amount of profits realized by him, by the use of said machine, in connexion with said Call, is five hundred dollars, and no more, according to his best knowledge and belief; and these defendants say, that they cannot answer this interrogatory with entire accuracy, and that the aforesaid amounts are approximate estimates, according to their best knowledge and belief; and they do not admit any liability to said plaintiffs, for the use of said machine prior to July 8th, 1845, when said Woodworth patent was surrendered for a defective specification as alleged in said bill.

9. In answer to the ninth interrogatory each of these defendants says, that he has been informed and believes that some grant, by the said William W. Woodworth to the said Brooks, was made as alleged, but he knows not its terms or effect, and requires the plaintiffs to produce and prove the same.

10. In answer to the tenth interrogatory each of these defendants says, that he has no knowledge, information, or belief as to the grants inquired of in this interrogatory, except from allegations in the plaintiffs' bill, and he requires the same to be produced and proved by the plaintiffs.

11. In answer to the eleventh interrogatory each of these defendants says, that he has no knowledge, information, or belief as to the grant, or confirmation, inquired of in this interrogatory.

And these defendants aver that their said planing business has been carried on as aforesaid in virtue of an exclusive right to use the said Hutchinson patent and invention in said Lowell, and with the full knowledge of said Brooks, and without objection from him until a few months previous to this suit; and that they had no knowledge or belief that they were infringing said Woodworth patent till the decision of Gould's case, as alleged; and afterwards they were informed and believed that said Woodworth patent had been surrendered and reissued with a different specification, the validity of which had not been established at law, to their knowledge, until the decision of the Edward's case, as alleged; and it was never their intention to violate any rights of the plaintiffs, or either of them.

These defendants are informed and believe, and therefore aver, that James Hill, of Lynn, Joseph Hill, of Woburn, Aaron Hill and Daniel Hill, of Stoneham, and Leonard Gibson, of Brighton, in the district of Massachusetts, had knowledge of, and said James, Joseph, and Leonard did use, in Woburn aforesaid, a planing machine, made by said James and Joseph, in principle and mode of operation substantially like the said Woodworth planing machine, claimed by the plaintiffs as

1605.

alleged, and prior to the pretended invention thereof by the said William Woodworth, deceased, to wit, in the years eighteen hundred and twenty-seven and eighteen hundred and twenty-eight.

And these defendants further aver that John Hale, formerly of Oakham, in Worcester county, in the State of Massachusetts, now of Bloomfield, in the county of Ontario, in the State of New York, had knowledge of, made, used, and patented in the United States, on the twenty-first day of June, in the year eighteen hundred and twenty-eight, a planing machine substantially like the said Woodworth planing machine, and prior to the pretended invention thereof by the said William Woodworth, deceased, and said Hale's patent was recorded anew, according to law, May 13, A. D. 1837.

And these defendants deny all combination and confederacy, and all infringements of the plaintiffs' rights, wherewith they are charged in the plaintiffs' bill, and they deny the novelty of the said William Woodworth's pretended invention, alleged in said bill, and they deny said invention and the validity of said patent.

Without this, that there is any other matter, cause, or thing in the said complainants' said bill of complaint contained, material or necessary for these defendants, or either of them, to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, avoided, or denied, is true to the knowledge or belief of these defendants, or either of them; all which matters and things these defendants are ready and willing to aver, maintain, and prove, as this honorable court shall direct; and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

September 4, A. D. 1848.

J. GILES, *Counsel for defendants,*
WM. LIVINGSTON,
EBENEZER N. CALEF.

UNITED STATES OF AMERICA,
District of Massachusetts, ss.

September 14.

Then and there personally appeared the above named William Livingston and Ebenezer N. Calef, [and] made oath that the aforegoing answer by them subscribed is true, according to their knowledge, information, and belief.

CHARLES SUMNER,
Commissioner.

And afterwards, to wit, on the sixth day of October, A. D. 1848, the complainants filed the following replication to the respondents' answer, viz:

The replication of William W. Woodworth and others, complainants, to the answer of William Livingston and others, defendants.

These repliants, saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto say, that they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied to by these repliants. Without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

C. P. & B. R. CURTIS,
For complainants.

And thence this cause was continued unto the October term, A. D. 1848, and from that term unto the May term, A. D. 1849, when and where the parties appeared, and the following decree made by the court, viz:

CIRCUIT COURT OF THE UNITED STATES,
Massachusetts district.

May term, 1849.

WOODWOORTH et al.
vs.
LIVINGSTON et al.

This cause came on to be heard upon the motion of the complainants' counsel, upon the bill, answer, replication, and exhibits, and by consent of parties it is declared by the court that the said complainants are entitled to the perpetual injunction and account prayed for by the said bill, said account to commence at such time as shall be found by the master, and be confirmed by the court.

And it is further ordered, that it be referred to George S. Hiliard, esquire, one of the masters of this court, to take the said account, and that, in taking the same, he have power to require all parties to produce before him, on oath, all books and papers relating thereto, and to hear such oral evidence as either party may produce, and on the motion of either of the parties to examine either of the other parties upon interrogatories. And all further directions are reserved until the coming in of the said master's report.

By the court.

JAMES B. ROBB, *Clerk.*

June 8th, 1849.

The following statements, estimates, answers to interrogatories, &c., were exhibited before the master, viz:

1606.

LOWELL, *Nov'r 7th*, 1847.

Memorandum of boards and plank planed by Livingston & Calef, at their mills in Lowell, from July 8, 1845, to July 25, 1848, inclusive, as follows:

		Feet.
1845, July,	planed	86,741
" August,	"	167,240
" September,	"	135,126
" October,	"	180,338
" November,	"	168,291
" December,	"	94,011
1846, January,	"	104,331
" February,	"	84,212
" March,	"	95,342
" April,	"	88,410
" June,	"	183,424
" July,	"	100,799
" August,	"	150,204
" September,	"	99,978
" October,	"	132,142
" November,	"	88,813
" December,	"	51,393
1847, January,	"	57,428
" February,	"	67,232
" March,	"	107,310
" April,	"	109,952
" May,	"	122,094
" June,	"	141,173
" July,	"	121,061
" August,	"	112,262
" September,	"	124,363
" October,	"	110,961
" November,	"	108,813
" December,	"	130,893
1848, January,	"	87,132
" February,	"	63,945
" March,	"	74,410
" April,	"	112,948
" May,	"	118,282
" June,	"	109,885
" July,	"	73,821
Total		3,962,760

Master's office. Before George S. Hillard, esq., master in chancery.

WOODWORTH and al.
vs.
EBEN. CALEF & William Livingston. } In equity.

Interrogatories proposed by the plaintiffs to the said Calef and Livingston, separately.

1. How long have you been engaged in, or familiar with, the business of planing boards and plank by means of Woodworth's patent planing machine?

2. Were you not employed [by] Brooks and Tyler, or by Artemas L. Brooks, one of the plaintiffs, in his planing mill? Did you not act as foreman of their or his mill for several years? And how many years were you in that capacity?

3. What number of feet of boards or plank can be planed in one working day, by one of Woodworth's patent machines, tended and fed by suitable hands or workmen, and run at the usual rate of speed? What number of feet of boards or plank were usually planed in one working day in Livingston and Calef's mill when they carried on the business of planing with the planing machine described in the plaintiff's bill in equity aforesaid?

4. What number of hands are requisite to tend and feed one planing machine of Woodworth's patent, running at the speed at which those machines are usually run?

5. What is the rent or yearly value of a shop or spot in the city of Lowell, of proper size and situation for a planing mill with one machine?

6. What rent or compensation did the firm of Livingston & Calef pay or allow to the owner or landlord of the premises occupied by them, from July, 1845, to July, 1848, inclusive, for so much or such part of said premises as were appropriated to, and used by, Livingston & Calef for a planing mill? Who was the owner of the said premises, or of whom did Livingston & Calef hire them, and to whom did they pay rent?

7. What rent or compensation did the firm of Livingston & Calef allow or pay to the proprietor of the steam engine, from which they took the power they used to run their planing machine, from July, 1845, to July, 1848, inclusive, for the power employed by Livingston & Calef during that period in running the said machine? Of whom did they hire said power?

8. What is the first cost or value of a new, well-built Woodworth's planing machine?

9. What is the average yearly expense of keeping such a machine in good running order?

10. During the aforesaid period, between July, 1845, and July, 1848, did not the shavings produced in the planing of boards and

planks supply sufficient fuel to keep the steam engine, from which power was supplied to your planing mill, running at proper speed?

11. Do you not know that wood shavings constitute good fuel for a steam engine?

12. Do you not know that the shavings produced by a planing machine are sufficient to keep running a steam engine adequate to run the planing machine?

13. What is the average rate of wages paid in Lowell for the services of a man capable of being the foreman of a planing mill?

What wages did you receive from Brooks & Tyler, or A. L. Brooks, during the three years above mentioned?

14. What is the average rate of wages paid in Lowell for the labor of such hands as are usually employed in a planing mill? What did Livingston & Calef pay their hands, employed in that way, during the said three years?

15. Are there any expenses incident to the planing of planks and boards, by Woodworth's planing machine, other than the cost of the machine, the repairs of the same, rent of the mill or shop, rent or cost of steam power, and wages of hands employed? If yea, what are they?

16. What was the price or rate that Livingston & Calef charged, during the said three years, for planing the boards or plank contained or described in their account rendered to the master in chancery?

17. If you have stated that Livingston and Calef were the owners of the steam engine. by the power of which their planing mill was run during the aforementioned three years, and did not pay rent for said power, state what is the value of steam power adequate to the running of the Woodworth planing machine, per month or per day.

C. P. and B. R. CURTIS, *for plaintiffs.*

November 12, 1849.

Master's office. Before G. S. Hillard, esq.

WOODWORTH et al.
vs.
LIVINGSTON & CALEF. } In equity.

Further interrogatories to Eben'r Calef.

18. Will not the fuel, produced in shavings by the action of one planing machine, be sufficient to keep running a steam engine adequate to furnish power to run three planing machines of capacity equal to the first?

19. If three planing machines cannot be kept running by steam power raised by the consumption of the shavings produced by one of said machines, state whether the fuel, so produced by one machine, is not adequate to run a steam engine capable of carrying two such planing machines.

20. What is the power of the steam engine belonging to Livingston & Calef? What machinery did you run by means of the same,

besides your planing machine? Did you not run a grist mill, with two run of stones, a matching *matching* and a circular saw?

21. During a portion of the time when you were in the employ of Artemas L. Brooks, did you not carry on his planing business by the thousand of boards planed? Did you not furnish all the hands employed in that business? Did you not find oil for the machine, and do all ordinary repairs, at your expense? How long did you carry on the business in this way, and on these terms?

22. What did you receive per thousand of boards planed by A. L. Brooks' machine, while you carried on the business in his shop on the terms stated in the answer to the next preceding interrogatory?

23. Did you receive from A. L. Brooks, during the period referred to in the two preceding interrogatories, more compensation for dressing boards on both sides than you did for dressing them on one side only?

C. P. & B. R. CURTIS.

November 16th, 1849.

Circuit court of United States.

A. L. Brooks et al.
vs.
W. Livingston et al. } In equity.

Additional interrogatories proposed by the complainants to Ebenezer N. Calef, one of the respondents.

No. 24. During what years did you do the work of Brooks' planing mill; was it not in 1841, 1842, and 1843; and from what month to what month?

25. In 1841, from July 6th, for one year, did you not do all the planing and dressing of boards (on one side or on both sides) for 55 cents per thousand; did you not, for this compensation, agree to make all repairs to the planing mill and apparatus, sharpen and fit the cutters and apply the oil, put into the machine and take from the machine the boards or plank, move and secure them from rain; and, in fine, do all the labor of the shop?

26. What sum of money did you receive as compensation for your services under said agreement, from July, 1841, to July, 1842; was it not over $1,000, and how much over?

27. Did you not do all the said planing with your own hands?

28. In the said year's work did you not plane for one man, say Mr. Fiske, 480 thousand feet of boards, planed on both sides, besides what was planed on both sides for other persons, or for Mr. Brooks?

29. Was there not a matching machine and a jointing machine in said Brooks's shop at the time above mentioned; were not these machines run by your brother?

30. Did your brother work said machines for you, or for his own account?

31. If he worked for you, what wages did you pay him?

32. Did the agreement between you and Mr. Brooks, of July, 1841, provide for the jointing and matching of boards and plank as well as for the dressing?

33. What was the price you were to receive for dressing and jointing, what for dressing and matching, per thousand?

34. Did you have a different or the same price, whether dressed on both sides or on one side?

35. Did you renew the said agreement for another year, from July, 1842; was it not renewed at reduced prices; did you not agree to dress boards and plank, under the renewed contract, for 50 cents a thousand; to dress and joint at one dollar a thousand; to dress and match at 1.50 a thousand?

36. What number of thousands of boards and plank did you dress in the first year, and what part of them were dressed on both sides; what number did you in like manner dress in the second year?

C. P. & B. R. CURTIS,
For complainants.

Circuit court of the United States, for the district of Massachusetts.

WOODWORTH and others
vs.
LIVINGSTON and another.
} In equity.

Before George S. Hillard, esq., one of the masters of said court, to take an account.

The answers of said William Livingston to interrogatories filed by the plaintiffs in taking said account.

1. I never planed with Woodworth's machine, and never have been engaged in planing with it. I have been engaged with planing with the Hutchinson machine, in connexion with Ebenezer Calef, and previously with Royal Call, more or less since 1842. It may be earlier, but I cannot tell exactly without looking at my books.

2. No.

3. I do not know. I had nothing to do with it personally.

4. I do not know.

5. It would depend altogether upon the place it was put in.

6. Livingston and Calef allowed me one hundred dollars a year rent for land alone. This price was fixed with Call, in connexion with his salary; the land is worth more. Call sold out to Calef. The buildings are owned by myself and Calef, with all the machinery and fixtures. The land was worth, from July, 1845, to July, 1848, one hundred and fifty dollars per annum, in my opinion.

7. We owned the power, and made no separate account of it.

8. I do not know.

9. I do not know.

10. I do not know. We used some wood, and we did some other work.

11. I believe they do.

12. I do not know.

13. I do not know what wages are required. Calef hired the hands and paid them. I never worked at the business. I looked over the books once a year with Calef.

14. I do not know.

15. I do not know.

16. I know nothing of that, except what appears on our books, and I cannot state that from recollection. I think some planing was done for three dollars a thousand feet; some for two dollars, and some for one. We got some good planing for sheathing, in consequence of our using the double planing iron cutter, peculiar to [the] Hutchinson machine, which we owned exclusively in Lowell; without this we should not have got nearly so much work. I know this fact by my selling boards to carpenters who were satisfied with the planing with double iron cutters, and not with the others. They said our planing was better than the others. The Merrimack Company, after having bought a right of Brooks, and being well acquainted with both machines, bought also of us a right to use the Hutchinson machine.

17. I do not know. I never hired nor sold steam power for that purpose.

18. I do not know.

19. I do not know.

20. It is called twenty-five horse power. We run a grist mill with one run of stones awhile, as an experiment, for considerable of the time of a year and a half. We put in a little eighteen inch stone mill, at the request of the owner, to try it in reference to the amount of power it would require, but did not use it much. Both mills could not be run with the planing machine for want of power. We had to buy wood in consequence of using one run of stones. I put in the grist mill, as an experiment, to see whether I could grind with steam to advantage. I now have a separate grist mill establishment, run by coal. There was a matching machine and a circular saw in the mill; they make fuel also for the engine by strips, &c. I do not know how much they were used.

21. I never worked for Brooks.

22. I know nothing of that.

23. I know nothing of that. WM. LIVINGSTON.

Boston, Nov. 30, 1849.

Sworn to before me.

GEO. L. HILLARD, *Com'er.*

Circuit court of the United States, for the district of Massachusetts.

WOODWARD and others } vs. } In equity.
LIVINGSTON and an other. }

Before George S. Hillard, esq., one of the masters of said court.

Answers of Ebenezer N. Calef, one of the said defendants, to inter-

rogatories proposed by the plaintiffs, in taking the account ordered by the court.

1. I planed, under Artemas L. Brooks, about eight and a half years, immediately previous to April, 1844, with a machine which was called the Woodworth machine, with Brooks's improvement, by which the board could be planed on both sides at the same time; that is all I have planed with the Woodworth machine. I have planed with the Hutchinson machine since April, 1844, to July 24, 1848, more or less; that is all the experience I have had with planing machines.

2. I was employed under Brooks about eight and a half years; and acted as foreman about six years, the last part of the time.

3. A day's work at Brooks's mill varied from three to six thousand feet a day, according to the quality; and it was the same at Livingston & Calef's mill, with the Hutchinson machine; that is as definite as I can answer; that is the way we planed at both mills.

4. It will require three hands to keep a Woodworth machine in full run; this includes getting the boards, running them through, and taking them away, as they are usually left at such mills.

5. It depends much on the situation; a good shop in a good location, with yard room, would be worth eight hundred dollars.

6. William Livingston owned the land on which Livingston & Calef's mill stands, from July, 1845, to July, 1848, and Livingston & Calef owned the mill equally. In making up the accounts between Livingston & Calef and Wm. Livingston, one hundred dollars a year was allowed Livingston for rent of land. This sum was fixed upon ten years ago, or more, in a lease to Royal Call, which was the basis of my agreement with Livingston. The land is worth much more, but Livingston having an interest, let the rent remain at the original sum.

7. Livingston and Calef owned the steam power jointly during that period, and no account was kept of it between them; some portion of the power was used for other purposes beside running the planing mill.

8. I do not know, I never purchased one.

9. I do not know, I have no means of knowing it. I never kept any separate account of the yearly expense of keeping the Hutchinson machine in order.

10. It did not. We bought and paid for fuel, I should think nearly a hundred cords of wood a year.

11. I do. Shavings from the planing machine make good fuel for a steam engine.

12. I think the shavings made by one engine will supply fuel enough to run it, if used with economy, and the engine be not used for any other purpose, except driving the machine.

13. I received from Brooks, during the latter part of the time I worked with him by the day, from eight shillings to ten shillings and six pence a day, from 1845 to 1848; a good foreman was worth ten shillings and six pence a day, and we could not keep our men at that.

Brooks hired one of our men away, though we offered him two dollars a day.

14. Livingston and Calef paid for hands from 1845 to 1848, all the way, from a dollar to ten shillings and six pence a day. I should think the average wages paid in Lowell was eight or nine shillings a day; ours will average eight shillings, I believe.

15. None except oil and a few things not usually called repairs, belts, &c., necessary to keep the machine running. It is sometimes necessary to team the lumber, in order to get it to plane.

16. We had two dollars and fifty cents a thousand feet, for good planing, for floor boards and finish boards; two dollars for rough planing for under floors and covering of buildings. We doing the teeming which was worth fifty cents a thousand; for a few boards planed well on both sides, we got three dollars and fifty cents a thousand feet; our planing was in three classes; first, three dollars and fifty cents a thousand feet; second, two dollars and fifty cents a thousand feet; third, one dollar and fifty cents a thousand feet. I think the first class was about one-tenth of the whole, and the remainder was about equally divided between the second and third classes. I can not be more explicit, without dissecting each charge during said period; we lost by bad debts, during that period, from two to three hundred dollars for planing.

17. I do not know; I never kept any accounts by which I can tell; and I never hired such power.

18. I think not. I never tried the experiment. Brooks run his machines by water when I was with him.

19. I do not know; but I think not.

20. We bought it for a twenty-five horse power; and we supposed to be such. We run, beside the planing machine, one set of grist mill stones; we had two sets, but never run but one with the planing machine; we also run a light matching machine, and a circular saw.

21. I did. I furnished nothing but the labor; I did some of the ordinary repairs, such as I could do myself; I have no accounts by which I can fix the time I carried on the business so, but I think it was about two and a half years.

22. Brooks paid me sixty-five cents a thousand feet for doing the labor; he furnishing all things except as above stated, during the first part of the time, and fifty-five cents a thousand feet during the last part of the time. But I could not have done the work for that price, unless I had had other work from Brooks, such as sawing and matching, by which I kept my hands at work advantageously, and which amounted to nearly as much as the planing.

23. I did not; but the boards were dressed by Brooks's machine, which planed both sides at once; and the planing was not of the best quality, the main object being to reduce them to a thickness. I could plane more of such boards than I could of customary planing on one side in same time.

EBENEZER N. CALEF.

BOSTON, *November 26th*, 1849.

Sworn to before me.

GEO. S. HILLARD,
Master in chancery.

CIRCUIT COURT OF THE UNITED STATES,
Massachusetts district.

BROOKS AND OTHERS
vs.
LIVINGSTON and another. } In equity.

To the additional interrogatories proposed by the complainants to E. N. Calef, one of the defendants, he answers as follows:

No. 24. To the 24th question he answers: I worked for Brooks from July 6, 1841, to April 1st, 1844, as appears by our book of accounts, marked A, to which I refer as an exhibit in support of my answer to this question. I planed for Mr. Brooks previously for several months, not exceeding six, at the rate of sixty-five cents per thousand feet, the account of which does not appear in our book above named.

25. To the 25th question he says:

I planed boards from July 6, 1841, to July 9, 1842, on one or both sides for fifty-five cents per thousand; but those planed on both sides were planed in a double machine, which planed both sides at once, and as they were for boxes, they were planed faster than good planing could be done on one side. Our agreement is in writing on page marked B, in said book, to which I refer for answer to the remaining part of this question; I add, however, that Mr. Brooks paid for all repairs which I could not do myself; I paid for nothing.

26. To the 26th question he says: I received ($1,039 31) ten hundred and thirty-nine dollars and thirty-one cents; this includes the whole pay for all the work done of all kinds, planing, jointing, and matching, and sawing, under said contract, by myself and my brother, and the men I hired.

27. To the twenty-seventh question he says: I did not. I hired one man all the time, and two a part of the time; and my brother worked with me all the time. I paid for labor about four hundred dollars; over that, I think, during the time mentioned.

28. To the 28th question he says: I find by said book that I planed about that amount; but the book shows what and how much I did; the box boards I planed for said Fiske.

29. To the twenty-ninth question he says: There was a matching machine and a jointing machine there; my brother run them a part of the time, and I run them a part of the time, as we found it convenient for our work.

30. To the 30th question he says: My brother worked said machines for me.

31. To the 31st question he says: By the agreement I made with

him, he was to have seven shillings to my ten of what we had after paying for other labor.

32. To the 32d question he says: It did, as will be seen in the agreement in the book referred to, and for the prices for each, as mentioned there.

33. To the 33d question he says: I had one dollar and five cents for dressing and jointing; for dressing and matching, one dollar and fifty cents, as per said contract.

34. To the 34th question he says: I had the same price whether dressed on one or both sides, dressing on both sides costing no more than good planing on one side, for the reasons above stated.

35. To the 35th question he says: I did not renew the said agreement; the agreement was written over and signed by Brooks, but not by me; as we could not agree on the prices, I continued to work, as appears by our settlements on said book, for the prices named in this question, and contained in the contract as written over and signed by Brooks, but not by me; from July 9, 1842, to July 8, 1843, and from the last date to April 1, 1844, I had sixty-two and one-half cents per thousand for planing, and the same for jointing and matching as from the first; all which will appear by said books and the settlements therein.

36. To the 36th question he says: I dressed in the first year one million one hundred and forty-four thousand and eighty-two feet, of which about five hundred and thirty thousand were dressed on both sides; and in the second year I dressed one million one hundred and two thousand four hundred and twenty-four feet, of which about the same amount on both sides, as in the first year; all which will appear more fully and in detail on said book, to which I refer, which is in the complainant's possession, and which I have examined by their permission.

EBENEZER N. CALEF.

UNITED STATES OF AMERICA,
Massachusetts, ss.

Sworn to before me, the 12th day of March, A. D. 1851.

GEO. S. HILLARD,
Master in chancery.

BROOKS
vs.
LIVINGSTON.

Feb. 28. *Evidence before the master.*

Isaac L. Noyes, foreman of Brooks & Tyler's planing mill. Runs three machines; been in the business five years this spring, all the time for Mr. Brooks; gives me two dollars a day; find myself. Three machines take three hands; on an average a man will plane from 6,000 to 8,000 feet a day with a machine; have done 8,000 or 9,000, only regular hours, same as the mills; 6,000 feet an average day's work winter and summer; 4 days besides Sundays; charge $2 50 for a thousand

feet. Have had constant employment for a year or two; sometimes a little slack; average between 5,000 and 6,000 feet a day the year round for each machine. Mr. Dudley Heath was foreman before I took hold. The power and room for one machine for one year would not exceed $600, wages $1 50 a day; interest, and wear and tear, not exceed $50; cost from $1 50 to $2, reckoning 6,000 a day; cost of the planing board 60 cents, would be 60 cents a day, for which they get $2 50; thus the machine is $1 90 a thousand profit of the machine; good shop and power can be had for $600. This $600 covers the fuel also.

Cr. I never run a machine; I take orders and file them; there is a clerk; I do the out-door business; my machine is on calculation of machine running every day except Sundays and four holidays; we have planed more this last year than the previous years; a machine does not depend entirely on custom work; we have the means of telling very nearly what we have planed the last year; we can come very near what it has cost to do the planing; have not examined our books with reference to what it has cost in the last year; plane boards on either side; our charge is for planing on one side; covers nothing except planing; when we do the teaming we have $3; we have planed a large quantity for Mr. Fiske; we have charged him $2 a thousand; most of this is for planing both sides; ordinarily we charge a dollar more; Mr. Fiske had a special contract; I understand that since June it has been done for $1 75 a thousand, for Mr. Fiske; Mr. Brooks told me so; I see the books; at $2 50 we clear $1 90 on every thousand feet we plane; under floors or rough work for $1 50 a thousand, when we just plane and do nothing else; have not taken into account the keeping books, collecting debts, bad debts, or tending the mill.

Direct resumed. Suppose we make a deduction in favor of Fiske, because he gives us a good deal, and teams it himself; we don't plane them as we would for floor boards; we can plane 3,000 feet of his boards while we plane 2,000 of floor boards; he is near us; he has always kept us supplied when we need it; we can put his by and resume it when we have not so much to do. Mr. Fiske was once a partner of Mr. Brooks; we run under floors through in half time we do others. formerly they were not planed at all; they are not planed smooth, but only to a thickness; we run about 3 to 2 of under floors and smooth boards 50 per cent. more.

Cr. Never saw any one contract with Mr. Fiske. Have heard the parties state what agreement was, viz., $2 a thousand; have planed floor boards and sheathing for him since June; don't charge him the same as for box boards; we have charged him $2 for this work; I spoke without thinking; this don't include jointing and matching; our charge to lumber dealers is less than for common custom work; charge them $2; have done work for Livingston at this rate; we do not do teaming, when charge $2 50 to carpenters.

Dr. Have seen boards brought into Lowell; 30,000 feet, perhaps, within a month; Mr. Livingston's team has drawn them away from the

depot; practice of charging less to lumbers; began the spring before Livingston stopt running his machines.

Cr. Fiske once had the power of plaintiff, with other business; don't know what he gave.

Dr. Fiske paid $1 50 to Brooks & Tyler for privilege of planing his own boards.

F. W. R. Amory. Lives in Boston; have been engaged in planing; sold my patent this month; was connected with planing mills here about 3 years; had about ten machines in 3 mills; we had a book-keeper; I frequently estimated the cost of planing from the expenses I paid; I could not say what it costs; I always estimated the actual cost of planing not to be over 60 cents; believe 50 or 60; think it costs more to plane lumber in Lowell than here; we get eastern lumber here; their lumber is harder. Mr. Noyes says that the principal lumber planed is northern; not a great deal of difference; we should not charge any more for northern lumber.

Cr. My opinion not formed upon examination of books, but from an estimate of costs, charges, and expenses; shavings will furnish fuel.

James A. Buffum. Own only one mill, 3 machines; I was first one who put up a mill in Massachusetts, I think in 1831; cost of planing 1000 feet about what has been stated, about 50 cents a thousand; my planing has cost me more; I have always told the parties to whom rights were sold that the costs would not exceed 75 cents when mill run with economy; have sold all rights in Essex county; have owned all right [in] Essex county from 2d extension.

Cr. Have made calculations from my books, and from having put up mills for others; have estimated cost of planing from different calculations, from cost of engine, wear and tear, engineer, men to tend, &c.; have superintended putting up various mills for other people when I have sold right and bought the engine; when you can have work enough, not cost more than 50 cents; have sold it for 50 cents on proceeds work, that is to say, if 2.00 were received, 25 per cent. on the proceeds, 75 cents for costs, 25 for bad debts, and the remaining 1.00 divided between the two; this is supposing the price 2.00; in large towns, the profit greater in proportion to amount of work.

John F. Keating. Boston; planing business; now work for Mr. Washburn; not his foreman; in Merrimack street; has 2 machines; don't keep books; have carried on [on] my own account 18 months on Harrison avenue, steady work; it costs me from 50 to 60 cents a 1000; not over 60 cents; have frequently examined my books for my own information; got my license from Brown; usual price is 2.00 one side, and 3.50 two sides; does not include teaming; got my right from Brown; divided profits.

Cr. Allowed in estimating cost, rent mill, help, and calculated 8000 feet a day; have figured it a great many times; no figuring with me.

William A. Swift. Boston; have been part owner in mill, Charlestown; was engaged in business one year personally; I took care of mill myself; averages 10,000 day; can plane 12,000 a day, if needed; have planed 2000 in an hour and five minutes; made calculations some times; a good mill average 8000 day with eastern lumber; have been part owner mill since 1846; don't think actual cost of planing more than from 55 to 60 cents a 1000.

Cr. Never examined my books.

March 7.

James Morse. Clerk; Brooks & Tyler; made out account which Curtis holds; first item is averaged, some 2.25, some 2.50; about an average; been clerk since October; items are correct.

Mr. Giles' witnesses.

Royal Call. Live in Lowell; have been engaged in planing at the planing mill of defendants; formerly owned it; carried it on between two and three years; planed pine lumber principally; a large portion comes from the country; some from the east; former is called northern lumber, other eastern lumber; I kept a regular book of all the work done; I have examined the entries of October, 1843, to ascertain the cost of planing; took that month as the one in which I had done the most work; I found that in that I had planed 111,724 feet; then went into an estimate of what it probably cost me to plane it; I allowed man who run the plane 1.50 a day, which, for 27 working days, was 40.50; additional help to assist him $10.00; engine at 1.25 per day, and allowing two-thirds of his time to the planing, using two-thirds of the power, $23.00; rent of the property at the price at I sold it at, at 10 per cent., and allowing one-half to the planer, was $21.66 for the month; ground rent for land (the buildings being on leased land) $8.33; repairs, oil, &c., I estimated at $25.00 per month; this was an estimate; superintending, and collecting bill, &c., at 3.00 per day; allowing one-half to the planing, $40.50, making total sum of $169.49 for that month; this makes the cost of planing per thousand to be about 1.51; I believe this to be correct.

Cr. Had one machine only; it was the Hutchinson patent; a double iron machine; run it by steam; used saw dust and shavings for fuel; it supplied itself; we were not enjoined the use of that machine. I sold out to Mr. Calef in April, 1844. Calef was Brooks's foreman before that time for some years; do not know how long. I charged 3 00 a thousand for planing good boards, including teaming or delivery. Teaming is usually reckoned at 50 cts. I paid 2 shillings for part of my teaming. This planing was done on one side. I planed good boards on both sides; some were charged $5 00 and some $2 50. Best boards were at 5 00. Price for planing boards, next to best, for under floors and coverings, was 1 00 a thousand; could not get them for more; only made them of equal thickness; did not do any more;

did not take any pains to keep irons sharp; was an agreement to take that sum; that kind of work was introduced in 1843. At this work the mill made nothing, only paid the cost. Could not get it for less; glad to keep hands at work when there was nothing else to do. The machine I used was the same defendants used till enjoined.

James Calef. Resides in Lowell; have been engaged in planing, and now have two machines in my care—one is Underwood's and one Hutchinson's. My mill belongs to the Merrimac Iron Company. One of my machines has been there eight years, and I have run it that time; the other not so long. I do not keep books. I do their work at so much a thousand. My work is so connected that I don't know as I can tell what it costs me. The company furnishes power and machinery, and I do their planing at so much a thousand. They give me 50 cents a thousand; they find every thing except my own labor; they deliver them at the shop door, and pay me extra for taking them into the shop. The Hutchinson machine does the best work; we do fine work in that, and rough work in the other. I run by water power. I have run one year by steam power.

Cr. I have employed Brooks to plane box boards for me, many years ago, as many as 12 or 14. I think I paid him as high as from $4 00 to 5 00; think it did not exceed 5 00.

Josiah Cawley. Resides in Lowell; have been in employ of Calef & Livingston; commenced April 1, 1845, and worked as long as their machine run, July, 1848. I run the planing machine last two years all the time; had charge of it. First year I run machine, had 1 50 per day; the second year, 1 75; had a man to put in boards and assist me. It took one man all the time; sometimes more help needed; on approach of a shower, necessary to get boards in. This man had a dollar a day. There was an engineer in addition; his wages were from 1 25 to 1 50 a day. Mr. Calef was the superintendent; he was about there pretty much all the time; he was off collecting bills and getting jobs when not there; mostly northern lumber planed at this mill—some eastern; had more to do some days than others; considered it a fair day's work to plane 5,000 feet common boards—in shortest days about 3,000; the most I can do was a little short of 9,000 covering boards; *there* were 1 00 a thousand boards; the last two years we planed considerably many of these boards, from $\frac{1}{4}$ to $\frac{1}{3}$ of the whole.

Cr. Planed about 5,000 or 6,000 a week, on both sides.

A. K. Hood. Resides in Lowell; am a carpenter, [doing] nearly as large a business as any in the place; have been in business for myself some 14 or 15 years; have covering boards and under floor boards planed by these machines, in large quantities; pay 1 00 per thousand for them. Previously we have used them without planing; of late years we have had them run through mill to give them an equal thickness, without regard to smoothness; it makes better work; have had it done by Livingston & Calef. About $\frac{1}{3}$ of the work I have done is rough planing.

Cr. Brooks & Tyler have done my work since Livingston & Co. were stopped. Norcross did a part of it last season; does not now. Brooks & T. now do all my work. They charge 1 00 for rough boards; think they charge 2 50 for fine planing on one side, including teaming. [Here the plaintiffs' books were shown to the witness, and he said he was mistaken, and the price was 3 00 with teaming.]

E. F. Watson. Resides in Lowell; am a carpenter; have a fair share of business; have been in business since 1835; have under floor and covering planing done; I pay 1 00 a thousand for that; I confirm the statement of Mr. Hood.

Cr. When the boards, beside being rough planed, are also grooved and jointed, I pay 4 00 a thousand. They team the boards one way for this. The tonguing and grooving is easier done when the boards have been previously rough planed.

Mr. Cawley called again. There is nothing gained in having the boards planed before tonguing, unless the boards were very dirty, in which case it run the cutters of the machine in the same proportion as it would the saw.

Mr. Buffum called by Mr. Curtis I regard it as an advantage in tonguing and grooving to have the boards rough planed first. It makes the boards of an even thickness. We do the two operations cheaper than both together. If the board be of unequal thickness, it is more difficult to match it.

Giles's Witnesses.

Tuesday, March 12.

Ephraim B. Sherman. E. Cambridge. Been engaged in planing business with my father. The business has been carried on there some 14 or 15 years. We keep books by which we can tell the cost of planing. Have had occasion to ascertain recently what was the cost of planing, to see whether we could afford to take out a license under the present extension of the patent of Woodworth's machine from Mr. Dean. It was before we were asked to be witnesses in this case. We had a license to run Woodworth's machine. We took the year from January 1, 1849, to January 1, 1850, and found the amount of business for the year, and found what proportion would be for planing and what for sawing, which are distinguished in our books. Then we ascertained the amount of expenses for the year, and apportioned the expenses to the business. I then divided that amount by the number of thousand feet planed during the year, and it gives me 1 50 and a fraction for the cost of planing a thousand. I am sure of this calculation. We declined the license. They charged us 25 per cent., which is 50 cents a thousand on one side. This calculation includes nothing for my own services or bad debts.

Cr. My father's name is Abraham P. Sherman. We have been

running since January 1. We stopped a week ago to-day. Do not know when our license expired. In the year between January, 1849, and January, 1850, we planed 991,000 feet of lumber. One machine, by steam; we run when we had work to do. It did not run all the time. Could not say how much it was at rest. Could not say how much it run. We have run through 15,000 feet in one day, and sometimes more; that is, on one side. I think one day we ran through 17,000. I reckoned the interest on the property and repairs at $500. This includes steam power. The fuel is not reckoned at any thing. Seldom have had occasion to buy it. Sometimes have had. We use shavings for fuel; four men, including the engineer, were occupied. If we had any sawing to do, generally kept one man at the sawing machine, and two at the planing machine. They sometimes ran together. There were four besides me. There is no charge for my services. I paid these four men $1,527 00 a year. Whole amount of our business is $3,481 00 for last year, in sawing and planing. Charged 2 00 a thousand for planing one side, and 3 50 for both sides; 2 00 for sawing plank furring; 1 50 for sawing floors and jointing, and 1 50 for plitting plank for fence rails. Sometimes saw mill required two men, and I often assisted myself. Whole amount of expenses is $2,373 00, including insurance 100 00, and horse keeping 156 00. Horse was used about the mill. Occasionally rode him around collecting. We could with three men have planed 12,000 [feet] a day, for three hundred days in the year. In my estimate I put down $140 00 for repairs. This is partly guess-work, and not all made up from books. Have not the means of telling what the amount of repairs on the planing alone would be for the year, for the last six months it is $45. These repairs will probably last through the year. They were of a kind to be permanent. We have declined taking a license solely on account of the expenses.

Giles, d. r. We plane eastern lumber, none else. Northern lumber is harder to plane, I think. We had extra help the day we run 17,000 feet. That planing was done well.

Abraham P. Sherman. Resides at E. Cambridge. Own the establishment my son has spoken of. Have heard my son's statement. He kept the books, and made up the account of expenses. He has the general management. We never had so good a year as last year. The data derived from the books were furnished by my son. The estimate of repairs was furnished partly by my own judgment, and I think it low.

Mr. Buffum states, in answer to an inquiry of Mr. Giles, that he is not a party to any instrument binding him to put down all infringements of this patent.

Mr. Giles's witnesses.

March 14. Jefferson Taylor. Resides in Danvers; has been engaged in planing with a rotary cutter for six or seven years. We have agreed

with Mr. Buffum for a license for the year, for 25 per cent. on the price of planing. Price is 2 00 a thousand I have but one. Could plane 6,000 feet a day. Do not plane so much; not more than 1,000 a day, on an average. Judge it cost from 1 00 to 1 25 a thousand. Have made no estimate. We plane eastern [lumber] principally.

Sam. D. Tilton. Resides in Salem; not directly in [the] planing business. Am half owner of a mill. Have been in it since 1842, and till within about two years have been personally engaged in it. I run one machine. I had two mills and one machine in each. Part of the time, I had but one mill. Planed eastern and southern lumber. Northern lumber is narrower than eastern. A narrow board cannot be planed faster than a broad one. An average day's work is 6,000 to 7,000 feet. I have kept an account of the work, and found it to be 40,000 a week. This is under most favorable circumstances. I have made a calculation by which it appears that it cost me 1 20 a thousand for planing, when I did 40,000 a week. It could not be averaged by planing merely a day. This is under very favorable circumstances. This was a good week's work.

Cr. Worked by steam. Had an engine. Paid 1 12 per day. Had a planer to whom [I] gave 1 75, and a laborer, to whom I paid 1 25, and a watchman, to whom I paid 75 cents per night. My own services were 1 75. I carried on sawing and jointing boards and matching in the same mill. I owned [the] premises in part, but owned the land. Paid 80 00 rent, and $120 00 was a proper interest on investment. Taxes, oil, wear, and repairs are 240 00. This includes the engine. I have left every thing out, except what applies to planing. My mill was a cheap mill, but not detrimental to the working effect of the machine. I received 2 00 a thousand for one side; 3 00 for two sides. Latterly we have planed for 1 50, since I have been in new mill. My partner now planes from 1 25 to 2 00. Prices not uniform. I owned the patent at the time referred to. Do not own the present extension. I do not think the cost of planing any less now than it was two years ago.

1849. *Account of planings, &c., at Brooks & Tyler's shop.*

368,573	feet sheathing boards, dressed - -	2¼	829 29
281,353	feet covering bds, dressed - -	1½	422 03
677,071	feet boards, dressed - - -	2¼	1,523 41
659,210	feet floor bds, dressed - - -	2¼	1,483 22
610,371	feet box bds, D. B. S. - - -	2	1,220 74
617,279	feet box bds, D. B. S. - - -	1¾	1,080 24
534,746	feet boards, D. B. S. - - -	3¼	1,737 92
51,565	feet finish bds, D. B. S. - -	2¾	141 80
115,428	feet partition bds, D. B. S. - -	3¼	375 14
3,915,596.	Average price per thousand 2 25.		8,813 79

Paid Ryan for labor, 249 days $\frac{7}{8}$, and 59 days $\frac{1}{2}$	414 50
Paid Noyes for labor, 243 days $\frac{7}{8}$, and Heald 65 days $\frac{7}{8}$	425 50
Paid Whipple for labor, 166 days 7	193 67
Average cost of planing per thousand 26 $\frac{4}{10}$ cents.	1,033 67

368,573 feet sheathing bds. mchd.
281,353 " covering " "
115,428 " partition " "

765,354	" matched	2	$1,530 71
710,775	" boards jointed	$1\frac{1}{2}$	1,066 16
108,131	" boards, rough match'd	$2\frac{1}{4}$	243 30
106,713	" clapboards, D. & J.	$4\frac{1}{2}$	480 21
	Sawing		481 07
	Dressing plank, Daniel's machine		115 53
	Sawing for Brooks & Tyler		450 00
			$4,366 98

Amount received for rent of shops and power	$2,199 00
" " shavings and sawdust	100 00
" " strips, $542 90; buttings, $202	744 90
Paid for labor on sawing, matching, and jointing	$2,121 44
" " of engineer and fireman	720 00
Cost of land, mills, counting room, engines, machinery, &c., $19,037 05, at 15 per cent.	2,855 55
Repairs on mills, and machinery, and engine	500 00
Paid out for oil	240 00
Profits to bal.	973 89
	$7,410 88

Mr. CURTIS:

SIR: You will see, by this account, that after allowing $3,355 55 for use of mills and repairs, we have a balance of $973, which will more than pay for planing our boards the past year.

Statement of the supposed expense of planing 1000 *feet boards.*

One planer's wages per day, is	$1 50	
One lugger's " "	1 00	
One engineer's " "	1 00	
Rent of mill	1 21	
Repairs	33	
		$5 04

The above is the cost per day of a mill, the rent of which is $400 00 per annum; the average amount of boards planed in that time is 8,000; therefore the average costs of planing 1,000 feet is 63, and that being the one-eighth of the expenses of a whole day.

JOHN F. KEATING.

The following is an estimate, by Royal Call, of the cost of planing of 111,734 feet of lumber, done in the month of October, 1843, it being the month in which the greatest number of feet was planed, and which, it is believed, cannot now be exceeded with one machine, provided the planing is done as well.

For man who tended the planer 27 days, at 9s. - -	$40 50
For help from another man part of the time (estimated) -	10 00
For two-thirds of services of engineer, at $1 25 per day -	23 50
Rent of buildings and machinery, costing $5,200, at 10 per cent., one half to planing machine, per month -	21 66
Land rent, per month - - - - - - -	8 33
Repairs, estimate per month, and oil - - - -	25 00
For superintending, collecting, &c., one half of a man at $3 00 per day, 27 days - - - - - - -	40 50
Cost - - - - -	$169 49

111,734 feet) 16,949,000($1 51 cts. and 6 mills per 1,000 feet.

It will be seen that some part of the above must, of necessity, be estimated, but as a whole it is low for good work, and few concerns can do it for that price.

ROYALL CALL.

Whole amount of business - - - - - - -		$3,500
For planing - - - - -	$2,225	
" sawing, &c. - - - - -	1,275	
		$3,500
Amount of expenses—Labor - - - -	$1,527	
Oil - - - -	90	
Insurance - - -	100	
Repairs - - -	140	
Interest - - -	360	
Horse keeping, and wear of wagon - - -	156	
		$2,373

The amount for planing $2,225 is $\frac{8\,9\,0}{1\,4\,0}$ of whole amount.
" " sawing, &c., $1,275 is $\frac{5\,1}{1\,4\,0}$ of whole amount.

Whole amount of expenses, $2,373.

$\frac{89}{140}$ of the same for planing - - -	$1,508 55		
$\frac{51}{140}$ " " sawing, &c. - -	864 45		$2,373
140)2373 00(16.95 = $\frac{1}{140}$ - - -	16 95		
140	89		
973	152 55		
840	1,356 00		
1330			
1260			
700			
700			

$1,508 55, the whole expense of planing, which, divided by the number of thousand planed, the quotient gives the cost per M.

The amount of lumber planed, in reality, is 991,000 feet, but put it in round numbers, for convenience, at 1,000,000.

1000 M.)1508 55($1 50 $\frac{855}{1000}$ the cost per M.
1000

508 5
500 0

8 55

E. B. SHERMAN.

Cambridge, March 12, 1850.

Expense of mill, exclusive of upper part - - - -	$2,000
Deduct for sawing and matching part - - - -	500
	$1,500

Cost per year—

Interest on cost, as above, $120; land rent, $80	$200	
Taxes, oil, wear and repair, (estimated in part)	240	
313)$440($1 40 p. day.		
313		
1270		
1252		
18		

Cost per day, as above - - - - - - - -	$1 40
Labor, one man, $1 75; one, $1 25; one, $1 12 - -	4 12
Watchman, 75 cents; self, $1 75 - - - - -	2 50
	$8 02

A fair week's work when planing in successive days, 40 M. being 6⅔ M. per day, at a cost per M. of $1 20.

Dull spells in the busy season of the year, a good many days plane not more than three or four M. per day, while the expense is nearly the same, say $1 40 per M. SAMUEL D. TILTON.

I, Stephen R. Dean, of Lowell, on oath depose and say, that I am clerk of the Merrimack River Lumber Company, formerly Fiske and Norcross, in said Lowell. I have made diligent search among the papers of said firm of Fiske and Norcross, for their contract with Benjamin Blood, jun., for planing, &c., but I have not been able to find the same, nor any copy thereof. I know, from settling with said Blood, that he had one dollar and a quarter for planing, and one half of the nett amount in addition, obtained for jointing, tonguing, and grooving. S. R. DEANE.

SUFFOLK, *ss.*

February 14, 1851, sworn to before me.

J. GILES,
Justice of the peace.

I, Benjamin Blood, jun., of Middlesex village, on oath depose and say, that I have made diligent search for my contract with Fiske and Norcross, of Lowell, for planing, referred to in my testimony before Hon. George S. Hillard, in the case of Brooks & Tyler vs. Livingston & Calef, and I have not been able to find the same, and I do not know where it is.

BENJAMIN BLOOD, JR.

HILLSBOROUGH, *ss.*

February 15, 1851.

Then personally appeared the above named Benjamin Blood, jr., and made oath that the above statement by him subscribed is true.

Before me, DAVID P. PERKINS,
Justice of the peace.

And thence from the May term, A. D. 1849, this cause was continued, from term to term, unto the October term, A. D. 1850, when and where, to wit, on the second day of November, A. D. 1850, George S. Hillard, esq., the master, filed his report, which is in the words following, to wit.

Circuit court of the United States, district of Massachusetts.

Master's report.

WOODWORTH and al.
vs.
LIVINGSTON and al.

By a decretal order in the above cause, I was directed to take an ac-

count of the profits made and received by the defendants for the use of the plaintiff's machine, and for that purpose I was empowered to require the parties to produce before me on oath all books and papers relating thereto, and to hear such oral evidence as either party may produce; and upon motion of either of the parties to examine either of the other parties upon interrogatories. In pursuance of the said order I caused the said parties to appear before me, and heard the testimony offered by them, and the arguments thereupon, and submit the following report.

By an account filed by the defendants, and sworn to by them, it appears that from July 8, 1845, to July 25, 1848 inclusive, they planed three millions nine hundred and sixty two thousand seven hundred and sixty feet of boards and plank. The average price received for this was two dollars per thousand feet. These two items are not disputed by the plaintiffs, and the question for my consideration is substantially this, in what proportions shall the above sum of two dollars per thousand feet be divided between the plaintiffs and the defendants.

The relation in which I stand to the case is not exactly parallel to that of a jury in the trial of an action on the case for an infringement of a patent. Their business is to award damages which are conjectural; but the duty of the master is to ascertain the amount of profits which have actually been received by the defendants. In doing this, however, it is impossible, or at least extremely difficult, to arrive at absolute certainty. The profits of the business are not exactly identical with the profits of the machine. What are the gains exclusively due to the invention, is the question to which I am to seek an answer.

To make use of the invention—to set it in motion—requires labor and capital; and then there are rent, repairs, expenses of various kinds; and thus the more complicated the machine, and the greater number of agents employed, the more the elements of computation are multiplied, and the more difficult the task of stating the account becomes.

As to the actual profits received by the defendants, it is a question of fact, of which they alone possess the knowledge. In their answer, which is evidence so far as it is responsive to the bill, they swear that the profits of their business did not exceed fifty cents per thousand feet, and that that is the sum for which they should be charged. The plaintiffs, on the contrary, contend that this is too small a proportion, and that they are entitled to at least one dollar per thousand feet; maintaining that the actual costs of planing is less than one dollar per thousand feet, and that even one dollar per thousand would be less than they have a legal right to demand.

Upon the view of the law, as I understand it, and of the particular duties imposed upon me by the order, I am required to ascertain, not what the defendants might have made under more favorable circumstances, not what other persons may have made under circumstances more favorable, but what in point of fact the defendants have made.

The elements for ascertaining this amount have been furnished by the defendants themselves. The amount of work done is stated in

their account; the rate of profit is stated in their answer. Their books have also been open to the examination of the plaintiffs, and they themselves have been examined under oath upon written interrogatories. It was stated, at the hearing before me, that these answers were not so full and ample as they might have been. Perhaps so; and yet, on examination, it does not appear to me that they are characterized by any thing more than that reserve which is natural to men who are giving evidence against themselves. Had more searching interrogatories been propounded they must have been answered. In support of the claims of the plaintiffs the evidence of five witnesses, Messrs. Isaac L. Noyes, F. W. R. Amory, James N. Buffum, John F. Keating, and William A. Swift, was introduced; they were all practically acquainted with the business of planing with the plaintiff's machine, and their testimony was, that the expense or costs of so planing ranged from fifty to sixty cents per thousand feet, leaving the rest clear profit.

On behalf of the defendants was offered the testimony of Royall Call, Ephraim B. Sherman, Jefferson Taylor, and Samuel D. Tilton; two of whom made the cost of planing a thousand feet of lumber to be one dollar and fifty cents; one of them to be from one dollar and twenty to one dollar and thirty cents; and one to be from one dollar to one dollar and twenty-five cents. Other witnessess were also introduced on behalf of the defendant.

Were I called upon, out of the elements furnished by this testimony alone, to state how much should be paid by the defendants, I confess it would be a difficult and embarrassing task, for each case has its separate and peculiar elements, and it by no means follows that, because a man in one place, and under the most favorable circumstances, is able to carry on the business at an expense of no more than sixty cents per thousand; another, in a different place, and under less favorable circumstances, is not able to do the same for less than a dollar and a quarter, or a dollar and a half, per thousand.

In enumerating the various items of evidence, I should have stated that Mr. James Morse, a clerk in the employment of the plaintiffs, presented a statement of the receipts and expenditures of the plaintiffs during one year. From this Mr. Giles, on behalf of the defendants, has made a calculation, by which it appears that the expenses of planing per thousand feet, in their establishment, amount to one dollar and ten cents. Upon examining this calculation I see no reason to doubt its correctness.

But in the view which I have taken of this case, and of the duties imposed upon me by the order, I have not attempted to reconcile the discrepancies, or extract from the testimony a rule by which the amount of profits to be paid by the defendants shall be ascertained.

But I have examined and regarded the evidence in the case to this extent, and no further; is there any thing therein which constrains me to come to the conclusion, that the statement rendered by the defendants, as to the actual amount of profits received by them, is not, in point of fact, true?

After much reflection, the conclusion to which I have arrived is, that there is nothing in the evidence before me which leads me to the conviction that the statement of the defendants, in regard to their profits, is not true. In other words, there is nothing irreconcileable between the truth of the statements made by each and all of the witnesses, and the truth of the statement made by the defendants.

My decision, therefore, is, and I report accordingly, that the defendants must account to the plaintiffs for fifty cents on each and every thousand feet of lumber planed by them.

The testimony of Mr. James N. Buffum is strongly pressed upon my attention on behalf of the plaintiffs. He testified that the actual cost of planing is about fifty cents per thousand feet; that he had sold all the rights of using the machine in Essex county; that he had always told the parties, to whom he sold, that the actual cost would not exceed seventy-five cents per thousand feet; and that allowing twenty-five cents for bad debts, collection, &c., there would remain a clear profit of one dollar a thousand; and that the terms on which he sold were a division of this profit equally between the patentees and their respective assignees. I have carefully considered the force of this testimony, and I am free to admit that it infuses a distinct element of embarrassment into the case, and makes me the less satisfied with the decision to which I have arrived; but in a case of this kind it is not possible to come to any conclusion which is not open to some objections. That to which I have arrived, and which I have above reported, is that against which, in my mind, the fewest arguments can be urged.

By the decretal order aforesaid, I was also directed to find the time at which the said account shall commence. The facts bearing upon this point are as follows:

On the seventh day of December, 1842, William W. Woodworth, the legal representative of the original patentee, assigned to Artemas L. Brooks the exclusive right to construct and use twenty planing machines in the county of Middlesex; which grant was to continue till the 27th day of December, 1849.

On the eleventh day of January, 1844, the said William W. Woodworth assigned to James G. Wilson all his interest in the patent in question, except the right to make and use the said machines in the State of Vermont.

On the eighth day of July, 1845, new letters patent were issued by the Commissioner of Patents for the said machine, to William W. Woodworth, in trust for the heirs-at-law of the late William Woodworth, for the residue of the term of twenty-eight years, from December 27, 1828, the original letters patent to William Woodworth having been surrendered, from doubts as to the accuracy and correctness of the specification.

The said Artemas L. Brooks, by his deed of July 20, 1847, assigned to Ignatius Tyler one-half of his interest in the said patent, to be used within the limits of the city of Lowell exclusively.

The said James G. Wilson, by his deed of May 20, 1848, assigned

and confirmed to the said Artemas L. Brooks the exclusive right of constructing and using twenty planing machines within the county of Middlesex; and the said Brooks, by his deed of July 1, 1848, granted and confirmed to the said Ignatius Tyler all the rights and privileges described in the deed of Brooks to Tyler, of the date of July 20, 1847, herein before mentioned.

Under these facts, there arises a question of law as to the time at which the said account shall commence.

The plaintiffs contend that the said account should commence July 8, 1845, and the defendants contend that it should not commence till May 20, 1848. Upon this question the parties are desirous of having the opinion of the court; and I, therefore, report the facts for their judgment.

I return herewith also the evidence taken before me; the answers of the defendants to the interrogatories before me; the account of the defendants; and several statements in writing as to the expenses of planing, which were severally sworn to before me.

All which is respectfully submitted.

GEO. S. HILLARD,
Master in chancery.

Master's fees,	$50 00
Notice,	9 30

April 25, 1850.

To which report the complainants filed their exceptions, as follows, viz:

CIRCUIT COURT OF UNITED STATES,
Massachusetts district.

WILLIAM W. WOODWORTH and al.
vs.
WILLIAM LIVINGSTON and al. } In equity.

Exceptions taken to the report of George S. Hillard, esq., one of the masters of this court, on the matters referred to him by a decretal order of this court.

First. For that the said master hath certified that, in his opinion, the defendants ought to account with the plaintiffs for the sum of fifty cents for each and every one thousand feet of lumber planed by them, as and for the profits made by the defendants by the use of the plaintiffs' machine; whereas the said master ought to have certified the sum of one dollar for each thousand feet of lumber so planed by the defendants.

C. P. & B. R. CURTIS & CURTIS,
For plaintiffs.

G. S. HILLARD,
Master in chancery.

Whereupon the premises being seen, and the parties heard, &c., the following order, recommitting said report to the master, was passed by the court, viz:

CIRCUIT COURT OF THE UNITED STATES,
Massachusetts district.

WILLIAM W. WOODWORTH et als.
vs.
WILLIAM LIVINGSTON et al. } In equity.

This action came on to be heard on exceptions to the report of the master, and the said report and exceptions having been made, and counsel having been heard on the several questions arising therein, it is ordered, that the report of the master be recommitted to him, with instructions, to ascertain and report the amount of profits which may have been, or with due diligence and prudence might have been, realized by the defendants, for the work done by them, or by their servants, by means of the machines described in the complainants' bill, computing the same upon the principles set forth in the opinion of the court; and that the account of such profits commence from the date of the letters patent issued with an amended specification; and in taking said account, the master is to have power to require both parties to produce before him, on oath, all books and papers relating to said account, and the subject matters thereof, and to answer under oath all interrogatories that he may see fit to propose, or that may be proposed by either of the said parties, to the other party, which, in his judgment are pertinent and proper. And all further instructions are reserved until the coming in of the master's report.

By the court,

ISAAC O. BARNES, *Clerk.*

Additional evidence before master.

Daniel L. Stevens. I reside in Manchester, N. H.; I have carried on the planing business, nine years for myself, and previously four years for the Amoskeag Manufacturing Company. Not all the time with Woodworth's machine, but with it for the last seven or eight years; I have run one till within the last two years, when I have run two; I have run by steam the last two years, and prior to that by water. We estimate that an engine of five horse power is requisite to run one of those machines. I match and joint, as well as plane. I get two dollars a thousand for planing and dressing boards, one side; for matching and jointing, when separate from planing, we get three dollars; when with planing, we get four dollars for the whole. We use northern boards almost entirely. We plane very few eastern boards. I calculated for one year the average amount planed by one machine a day, and it was a trifle over five thousand feet. A man might plane more. I think from five to six thousand feet a day is a fair day's work. I superintended this work. We usually kept three men at work in the planing shop on two machines; one man on each machine, and the third for matching and jointing. The average of five thousand feet was of boards planed. We did not keep any account of matching and jointing. One engine was of 50 horse power. We let it for other purposes. The

fuel is supplied by the shavings and saw dust of the machine. We pay our engineer two dollars a day. We use some of our machine for boxing; it averages about fifty or sixty cents a thousand of cost in planing. I call sixty cents strong. That covers all the expenses. One year I let out the planing business to somebody else; I let it to a man named Crane. We supplied power and machine, and he furnished the labor. I paid him, I think, fifty cents a thousand for planing and matching, and four shillings a thousand for planing and jointing. I don't recollect whether this was five or six years ago. It was while I used water power.

Cross examination.

I think Mr. Crain's name is J. C. Crane, but I am not certain. I do not know where he is now. I have not seen him for two years. The last I heard of him was down east, making shoe boxes, but I don't know the town. I am not in the planing business now. I paid Crane fifty cents a thousand for all he did, except what he matched, and a shilling extra for matching. We only paid him for planing one side, whether he planed one side or two. There was nothing paid for jointing, and he worked with a machine which had only one set of cutters. We made a bargain with him by which he was to receive fifty cents for all he planed, whether on one side or two. He had one man to help him. We paid oil. He worked a year on this contract. He had only one machine. The matching machine matched and jointed both, the planing machine only planed. He had no other purquisites, and no other inducements, I think. He had as much as he could do. He was running for the company all the time. He boarded himself. It was either five or six years ago. About a third of all that was done would come to four shillings, and perhaps a little more. I quit the business the first of January. I have made on the whole business. I made three thousand dollars last year. We had twelve thousand dollars invested in real estate. We rent all but the planing and box business. I had a partner, Mr. Baldwin. We received sixteen hundred dollars a year rent. My calculation covered the last year. We plane and make boxes both. I could not tell separately how much I made on the planing business. We plane as well for boxes as for anything. These boxes are cloth boxes. I do not know the amount we planed last year. We have two men employed in planing; one employed the whole time, and one about half the time. I don't think I could give the whole expense of planing last year. We planed a million of boards for ourselves, and I don't know how many for others. We consider one horse power worth fifty dollars a year, that is, one horse power with the building to use it in. That includes one engineer, and such expenses as the oil for the engine. We rent it for that, and we calculate that this is a fair rent. We let 32 horse power for $1600, and keep the remainder, 18, for ourselves. We calculate five horse power for the planing machine. The next step would be the man's wages a year. We call it nine shillings a day. We have paid from $1 25 to $1 50 per day; never over nine shillings. We calculate repairs and oiling the

machine, 50 dollars a year. That is what it has cost us some years. It never exceeded that. The last year we had a new machine, and it cost us very little for repairs. We allow only one hand to one machine. We calculate one machine will average about five thousand a day. One hand can do all the labor. The boards are all delivered in the shop. He takes them out of the machine and puts them in. We calculate it is worth six pence a thousand to get them into the shop. We take nothing else into the account. I consider $1000 a fair rent for the room we occupied, in which are two planing machines, two jointing machines, and a double matching machine. It is 24 feet by 92. I don't make any allowance for getting the business. I never run after business any, but took what come. It takes some time to collect. We have to pay our bills and collect ourselves. I have always done that part of the business myself. We estimate our doubtful debts last year, after eight years business, to be about five hundred dollars. Our business is principally for the companies or ourselves. We have never planed for anything less than 2 00. When we do custom work, we do the teaming. We do it both ways if they want it done.

Direct examination resumed.

The rent of $1,000 above mentioned includes the privilege of getting the business of planing boards for boxes; our yard is 75 feet by 126, and we use half of it for our lumber; a jointing machine is 40 feet long but not so wide as a planing machine; a planing machine is 10 feet long; we have to put up a carriage to run the boards along, which is about as long as the machine; a matching machine with the rolls to run the boards on each way takes up about 20 feet; we use about half the room for the planing machine to lay lumber in.

Cross examination resumed.

A planing machine requires the length of a board at each end to run it out; our machine is so contrived as to run boards over heads of the men engaged on the jointing machine.

Otis King, witness for defendants. I live in Boston; I have been in the sawing and planing business about ten years; I used Hutchinson's machine at first, and then one I bought of Stone; I am at the foot of Cambridge street; I have planed the common lumber used in Boston; I agreed to pay 50 cents a thousand for my license to the owners of the Woodworth machine; I worked pretty hard, and am pretty prudent, and have come out about where I started; if I could have had planing all the time, and got pay for it, I should have come out pretty well; I have done as well as I could; I begun with nothing, and have come out about the same; I have maintained my family; I have not been able to pay the Woodworths that amount of 50 cents; I have paid what I could.

Benjamin Blood. I live in Middlesex village; I have been engaged in planing in Lowell; I commenced in May, 1847, and worked in

1847 and 1848 at Fisk and Norcross's mills. The agreement between me and Norcross was, that they should furnish buildings and power, and I furnished the machine and the work; I had a dollar and a quarter a thousand for planing during the period I worked; we planed boards almost wholly, and they consisted of northern pine, eastern pine, and spruce; that is usual planing in Lowell.

Cross examination.

I had one machine; it was about two years; in that time I planed something near eleven hundred thousand; all I did was for Fiske and Norcross, and they paid me $1 25; the boards were planed, jointed, and matched, but not all of them; the agreement with Norcross was in writing; used one of Hutchinson's machines; we run from early in May, 1847, till July, 1848, when an injunction was served, and then a bargain was made with Mr. Brooks for the privilege of running, and I kept on till April, 1849; Norcross paid Brooks fifty cents a thousand for all that we had done or did, amounting to about $550, and I paid one half of it; I paid one half of the costs of the injunction; I lost money at the above price; I employed two hands; one's wages were $1 50, and the others $1 25, and for about three months of the second season, I paid a man $1 75; I gave also pretty much the whole of my time to the business; the names of my men were Joseph H. Blake and Jedediah Blake; I found oil, files, cutters, &c.; there was nothing uncommon in the expenses for repairs; the first winter the machine lay still about six weeks for repairs.

And on the first day of April, A. D. eighteen hundred and fifty-one, the second report of George S. Hillard, esquire, master in said cause, was filed, and is in the words following, viz:

Circuit court of the United States, Massachusetts district.

WILLIAM WOODWORTH and al. vs. WM. LIVINGSTON and al. } In equity.

Second report of the master.

By a decretal order in the above entitled cause, my former report was recommitted to me with instructions to ascertain and report the amount of profits which may have been, or with due diligence and prudence might have been, realized by the defendants for the work done by them, or by their servants, by means of the machines described in the complainants' bill, computing the same upon the principles set forth in the opinion of the court.

At a hearing which was heard before me in pursuance of this order, the plaintiffs introduced the testimony of Mr. Daniel L. Stevens, and the defendants introduced the testimony of Mr. Otis King and Mr. Benjamin Blood. The plaintiffs also filed additional interrogatories to E. N. Calef, one of the defendants, which were duly answered by him.

By the order now under consideration, I am directed to ascertain, not the amount of profits which the defendants actually did make or receive, but the amount which they might have received, or ought to have made or received, under ordinary circumstances, and using due diligence and prudence; this is not an actual but a conjectural sum, and in arriving at it I am to be guided by all the elements in the case furnished by the evidence on both sides.

I now proceed to examine the testimony in the case, both that which was formerly, and that which has been recently, introduced by the light of the order under which I am now acting, and of the opinion of the court.

At the former hearing, the testimony of five witnesses, Messrs. Isaac L. Noyes, F. W. R. Amory, James N. Buffum, John F. Keating, and Wm. A. Swift, was introduced on behalf of the plaintiffs, all of whom testified that the cost of planing with the plaintiffs' machine would not in any case exceed sixty cents per thousand feet, leaving one dollar and forty cents as nett profit.

At the second hearing, Mr. Daniel L. Stevens was introduced on the part of the plaintiffs, and testified substantially to the same effect.

I therefore consider it to be established, so far as the evidence of the plaintiffs is concerned, that the amount of profits which the defendants might have received, with the exercise of due diligence, is not less than one dollar and forty cents per thousand feet.

On behalf of the defendants, at the former hearing, Messrs. Royal Call and Ephraim B. Sherman testified that the cost of planing amounted to one dollar and fifty cents per thousand feet. Mr. Jefferson Taylor testified that the cost was from one dollar to one dollar and twenty-five cents per thousand feet; and Mr. Sam. D. Tilton testified that the cost was one dollar and twenty cents per thousand feet.

At the second hearing, two witnesses—Messrs. Otis King and Benjamin Blood—were introduced on behalf of the defendants, but their testimony had exclusive reference to their own contracts and peculiar circumstances, and gave me no aid, except incidentally, in arriving at the result prescribed by the court.

To the testimony offered by the defendants may be added their own statement, as contained in their answer, that the cost of planing with their machine is one dollar and fifty cents per thousand feet.

Taking the average of the testimony of the several witnesses offered on behalf of the defendants, including that of the defendants themselves, I find that the aggregate of cost or expense, as made out by the defendants, is one dollar and thirty-six cents per thousand feet.

Taking these two amounts, as furnished by the plaintiffs and defendants, respectively, to wit, sixty cents and one dollar and thirty-six cents per thousand feet, the average or aggregate of the two is ninety-eight cents costs, leaving one dollar and two cents as profit.

I proceed now to examine the evidence furnished by the answers of E. N. Calef to the additional interrogatories filed on behalf of the plaintiffs, with a view of arriving at the result in another way. He

states—and it appears by the book which has been laid before me—that in July, 1841, he agreed to do the work of Brooks's planing shop at 55 cents per thousand feet for dressing, (that is, planing,) $1 05 for dressing and jointing, and $1 50 for dressing and matching.

The next year he worked at the rate of 50 cents for dressing, $1 00 for dressing and jointing, and $1 50 for dressing and matching.

In July, 1843, a new agreement was made, by which he received 62½ cents for dressing, $1 00 for dressing and jointing, and $1 50 for dressing and matching. This agreement lasted three months.

By these contracts, Mr. Brooks furnished shop, machine, and power.

I will throw out of the case the prices paid for dressing and jointing, and those paid for dressing and matching, and consider only those paid for dressing or planing, as that is the work for which two dollars per thousand feet is charged, and that has been assumed as the amount which the defendants have received. And I will also take 55 cents per thousand as the fair average price upon all the contracts.

Out of every two dollars received for the work, Mr. Calef thus had 55 cents, and Mr. Brooks $1 45; and I am to inquire how much of this $1 45 is to be set down as power, machine, and shop—it having been proved before me that fuel costs nothing—the machines furnishing their own fuel, in the shape of shavings and sawdust.

From the evidence in the case, I take 5,500 feet per day to be a fair day's work for one machine. Taking 310 working days in the year, the aggregate of a year's work will be 1,705,000. At two dollars per thousand feet, the gross receipts for a year will be $3,410 00.

From this sum I deduct at the rate of 55 cents per thousand feet—being the cost of labor—being the sum of $937 75; leaving the sum of $2,472 25, as the amount of rent, power, and profit.

I now proceed to inquire what sum should be deducted from this amount for rent and for power.

Mr. Calef states in his answer to the 5th interrogatory, that the rent of a shop in Lowell, in a good situation, with yard room suitable for one machine, would be eight hundred dollars.

This seems to be too large an estimate, and to be hardly consistent with other parts of his testimony. In his answer to the 6th interrogatory, he states that the ground rent of the premises occupied by them is fixed at one hundred dollars per annum. In his answer to the 20th interrogatory, he states that his engine was one of twenty horse power, and that they run, besides the planing machine, one set of grist mill stones, a light matching machine, and a circular saw.

Mr. Stevens, who resides in Manchester, states that he considers the amount of one-horse power to be worth $50 00 a year; that is, one-horse power with the building to use it in; estimating the power necessary to carry one machine at five-horse power, it would follow that $250 00 per year would be the sum to be allowed for rent and power of one machine, according to Stevens's statement; this may be too low, and is undoubtedly too low for Lowell; I will, therefore, double it, and allow $500 00 for rent of shop and power, where one machine is used.

Deducting the sum of $500 00 from the sum of $2,472 25, above mentioned, there remains the sum of $1,972 25, the yearly profit of the machine.

The proportionate amount of profit on every two dollars, at this rate, is obtained by finding a sum which shall bear the same proportion to two dollars that $1,972 25 bears to $3,410 00; this sum is one dollar and fifteen cents.

Thus, by the two processes herein before set forth, I arrive at the results of one dollar and two cents, and one dollar and fifteen cents, respectively, as the sums with which the defendants are to be charged as profit on every thousand feet of board planed. It is true that these amounts are conjectural, but any amount must be conjectural; and I am not aware that I have infused into the case any element too unfavorable to the defendants. By the decision of the court, they are trespassers and wrong-doers in the legal sense of these words, and are consequently in a position which may make them liable to be mulcted in an amount of damages greater than the profits they have actually received; the rule being not what benefit they have received, but what injury the plaintiffs have sustained.

On the whole, upon the principles of the decision of the court, and in conformity with the directions of the order, I feel bound to report that the defendants should account to the plaintiffs in the sum of one dollar for every thousand feet of board planed by them.

By the decision of the court the date at which the said account shall commence is fixed at July 8, 1845, the date of the reissued patent.

The plaintiffs claim to be allowed interest on the sum found due to them from the defendants from the date of July 25, 1845; but, under the terms of the order, I did not feel at liberty to allow the said charge, but only to report the said application for the decision of the court.

I return herewith the evidence taken before me at the second hearing, and also the answers of E. N. Calef to the additional interrogatories; and the book herein before referred to shall be produced, if desired, at any hearing before the court.

All which [is] respectfully submitted.

GEO. S. HILLARD,
Master in chancery.

Fees of the master, $30 00.
Boston, April 1, 1851.

To which report the respondents aforesaid excepted, which exceptions were as follows, viz:

CIRCUIT COURT OF THE UNITED STATES,
Massachusetts district.

W. W. WOODWORTH and others
vs.
W. LIVINGSTON and another. } In equity.

The defendants except to the master's second report, in the following particulars:

1623.

1. Because the master has assumed, as the basis of his calculation, 5500 feet to be an average day's work with one machine; whereas the proof is, that defendants did not plane, on an average, 4200 feet per day with their machine; the whole amount planed being 3,962,760 feet, and the whole number of days being 950.

2. Because the master has construed the decretal order, recommitting his first report, to require him to charge the defendants with all the profits which they might, or with due diligence ought to, have made by the use of the plaintiffs' invention, instead of the actual profits realized by them as prayed for in the bill; and pursuant to such construction, the master has charged the defendants with conjectural instead of actual profits, and made his account broader than the prayer of the plaintiffs' bill of complaint.

3. Because any other rule of making up the account than the rule of actual profits is totally vague and uncertain, and against the weight of evidence.

J. GILES, *for defendants.*

From the October term, eighteen hundred and fifty, said cause was continued to the present term; and now, the exceptions aforesaid being heard and considered, the same are overruled, and on the tenth day of July, A. D. eighteen hundred and fifty-one, the final decree for complainants was made by the court, and is as follows, viz:

Circuit court of United States, Massachusetts district. May term, 1851.

WILLIAM W. WOODWORTH and al.
vs.
WILLIAM LIVINGSTON and al.
} In equity.

The substance of this bill of complaint was for relief by injunction against the defendants, for using one of the machines commonly called Woodworth's planing machines, letters patent for which are duly vested in the complainants, and for an account of the profits made by the defendants in said use. And at the May term of this court, in the year 1849, it was

Ordered, that the said cause be referred to George S. Hillard, esq., one of the masters of this court; and the said master having heard the parties, reported to the court that the defendants had planed, by means of the machine aforesaid, three millions nine hundred and sixty-two thousand seven hundred and sixty feet of lumber between the eighth of July, eighteen hundred and forty-five, and the twenty-fifth of July, eighteen hundred and forty-eight, and that the defendants should pay to the complainants the sum of fifty cents for each and every thousand feet of lumber planed by them as aforesaid, and the master referred the question of the time when the said account should commence to this court; and the said complainants thereupon filed exceptions to the said report.

This cause was afterwards heard on the master's report and the exceptions thereto, and at the last term of this court it was ordered that the report of the master be recommitted to him, with instructions to ascertain and report the amount of profits which may have been, or with due diligence and prudence might have been, realized by the defendants for the work done by them or their servants, by means of the machines described in the complainants' bill, computing the same upon the principles set forth in the opinion of the court delivered at the same term, and that the said account of such profits commence from the date of the letters patent issued with an amended specification, viz., July, eighteen hundred and forty-five. And all further instructions were reserved until the coming in of the master's report.

And the said master having heard the parties, at the same term of the court, made his further report in the matters submitted to him, and he therein declared that the defendants ought to pay to the complainants the sum of one dollar for each and every thousand feet of lumber planed by the defendants aforesaid; and as to the claim of the complainants, which they made before him for interest, the master disallowed the same.

And thereupon exceptions were made by each of the parties to the said report of the master, which afterwards came on to be heard before this court. And the court having fully heard the parties, by their counsel, doth order and decree that the said report of the master do stand confirmed, except in so far as interest is thereby disallowed, and that the defendants within ten days from the date of this order do pay to the complainants the sum of three thousand nine hundred and sixty-two dollars and seventy-six cents, with interest thereon, from the date of the filing of this bill to the time of entering this order, namely, seven hundred and thirteen dollars and twenty-nine cents and costs, to be taxed by the clerk; and that the defendants be and the same hereby are perpetually enjoined from using any one or more of the machines, substantially the same in construction and mode of operation as the planing machine described in the said bill of complaint.

By the court,

ISAAC O. BARNES, *Clerk*

July 10, 1851.

Whereupon the respondents aforesaid, on said tenth day of July, A. D. eighteen hundred and fifty-one, filed their petition of appeal to the Supreme Court of the United States, as follows, viz.

In the circuit court of the United States, for the first circuit and district of Massachusetts, in equity, May term, 1851, between William W. Woodworth, James G. Wilson, Artemas L. Brooks, and Ignatius Tyler, plaintiffs, and William Livingston and Ebenezer N. Calef, defendants.

The petition and appeal of William Livingston and Ebenezer N. Calef, the defendants in the above cause respectfully show, that your petitioners are advised that the final decree of said court, made in the above

cause at the present term of the said court, is erroneous and ought to be reversed, and that your petitioners respectfully do appeal therefrom to the Supreme Court of the United States, and offer such good and sufficient security as by law is in such case required.

Wherefore your petitioners pray that their said appeal may be allowed, and that the same, with a transcript of the record in the above cause, may be certified to the said Supreme Court; that the said decree, if found to be erroneous by the said Supreme Court may be reversed, and that such other order or decree may be made therein, as shall be agreeable to equity and good conscience, and that these appellants may be fully restored to all which they have lost by reason of said decree.

WILLIAM LIVINGSTON,
EBENEZER N. CALEF,
J. GILES, *Counsel for defendants.*

Whereupon said appeal was allowed by the court.

UNITED STATES OF AMERICA,
Massachusetts district, ss.

I, Isaac O. Barnes, clerk of the circuit court of the United States, for the first circuit, Massachusetts district, do hereby certify, that the foregoing is a true copy of the record of the case of William W. Woodworth et al., in equity, vs. William Livingston et al.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the said court at Boston, this fourth day of [SEAL.] May, A. D. 1852, and in the seventy-sixth year of the independence of the United States of America.

ISAAC O. BARNES, *Clerk.*

MASSACHUSETTS DISTRICT, *ss:*

The President of the United States of America, to the marshal of our district of Massachusetts, or either of his deputies, greeting:

Whereas, William W. Woodworth, of Hyde Park, in the northern district of New York, as he is the administrator of William [SEAL.] Woodworth, late of the city of New York, in the southern district of New York, gentleman, deceased, and James G. Wilson, of the city of Philadelphia, in the eastern district of Pennsylvania, gentleman, and Artemas L. Brooks, and Ignatius Tyler, of the city of Lowell, and county of Middlesex, and Commonwealth of Massachusetts, copartners in the business of planing boards by machinery; by the consideration of the judges of the circuit court, held at Boston, for and within our district of Massachusetts aforesaid, on the fifteenth day of May, A. D. 1851, to wit, on the tenth day of July, A. D. 1851, recovered judgment against William Livingston and Ebenezer N. Calef, of said Lowell, copartners in the business of planing boards by machinery in said Lowell, for the sum of four thousand six hundred and forty-three dollars and two cents debt or damages, and three hundred and eighty-four dollars and three cents, costs of suit, as to us appears of record, whereof execution remains to be done: We

Damages,	$4,643 02
Costs,	384 03
	$5,027 05
	1 00

command you, therefore, that of the goods, chattels, or lands, of the said William Livingston and Ebenezer N. Calef, within our district, you cause to be paid and satisfied, unto the said William W. Woodworth, James G. Wilson, Artemas L. Brooks, and Ignatius Tyler, at the value thereof in money, the aforesaid sums, being five thousand and twenty-seven dollars and five cents, together with one dollar more for this execution, and thereof also to satisfy yourself for your own fees: and for want of goods, chattels, or lands of the said Livingston and Calef, to be by them shown unto you, or found within your district, to the acceptance of the said Woodworth, Wilson, Brooks, and Tyler, to satisfy the sums aforesaid, we command you to take the bodies of the said Livingston and Calef, and them commit unto either of our gaols in our district of Massachusetts aforesaid, and detain in your custody, within either of our said gaols, until they pay the full sums above mentioned, with your fees, or that they be discharged by the said Woodworth, Wilson, Brooks, and Tyler, the creditors, or otherwise by order of law.

Hereof fail not, and make return of this writ, with your doings therein, into the said court, to be held at Boston, within the district of Massachusetts aforesaid, upon the fifteenth day of October next.

Witness the honorable Roger B. Taney, at Boston, the twenty-seventh day of May, in the year of our Lord one thousand eight hundred and fifty-two. ISAAC O. BARNES, *Clerk.*

Boston, May 29, 1852. Received the amount of the within execution of the defendants, in full satisfaction of the same, and without prejudice to defendants' rights of appeal. CHAS. P. CURTIS,
Attorney for the creditors.

UNITED STATES OF AMERICA,
Massachusetts district, ss:

I, Isaac O. Barnes, clerk of the circuit court of the United States, for the first circuit, Massachusetts district, do hereby certify, that the foregoing is a true copy of the execution in the case of William W. Woodworth et als., in equity, versus William Livingston et al., issued on the twenty-seventh day of May, A. D. 1852, with the endorsement of satisfaction thereon.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the said court at Boston, this twenty-seventh [SEAL.] day of October, A. D. 1852, and in the seventy-seventh year of the independence of the United States of America.

ISAAC O. BARNES, *Clerk.*

UNITED STATES OF AMERICA,
Massachusetts district, ss.

October term, 1852.

At a circuit court of the United States, for the first circuit and district of Massachusetts, begun and holden at Boston, on Friday, the fifteenth day of October, in the year of our Lord one thousand eight hundred and fifty-two—

Before the Hon. Benjamin R. Curtis, associate justice.
Hon. Peleg Sprague, district judge.

In the circuit court of the United States, for the first circuit and district of Massachusetts, in equity, October term, 1852—

Between WILLIAM W. WOODWORTH, James G. Wilson, Artemas L. Brooks, and Ignatius Tyler, plaintiffs,
and
WILLIAM LIVINGSTON and Ebenezer N. Calef, defendants.

The petition and appeal of William Livingston and Ebenezer N. Calef, the defendants in the above cause, respectfully show, that your petitioners were advised that the final decree of said court, made in the above cause at the May term of said court, 1851, was erroneous, and ought to be reversed, and that your petitioners did, at the same term, respectfully appeal therefrom to the Supreme Court of the United States, and filed good and sufficient security, as by law required, to the amount of $7,500, which appeal was allowed by the court; and afterwards, during the sickness of the attorney of your petitioners, and without notice to him or to your petitioners, the plaintiffs obtained the certificate of the clerk of the allowance of said appeal, and thereupon had said cause docketed in said Supreme Court and dismissed, and obtained a mandate to the court below to proceed in said cause to execution, as to law and equity should appertain; upon notice of which your petitioners immediately filed a motion for the stay of all proceedings in said cause, till the fifteenth day of May, 1852, to allow the defendants to obtain leave to enter said cause, and file the transcript of the record thereof in the Supreme Court; and said motion was allowed, and said proceedings were stayed accordingly; and said time was afterwards, on like motion, extended by the court to the twenty-fifth day of May aforesaid. During which period your petitioners obtained a transcript of the record, and filed their motion in the Supreme Court for leave to enter said cause; which motion, after a hearing thereon, was disallowed, upon the ground that the recent adjournment of said court was, for all purposes of motions, considered as the end of the term; after which the motion of your petitioners was not in order under the rules of the court, and because said cause could be entered at the next term of said Supreme Court upon a new appeal; and thereupon the plaintiffs took out execution in said cause for the total sum of $5,028 05, which your petitioners have fully paid and satisfied, but without prejudice to their rights of appeal. And now your petitioners do hereby respectfully appeal anew from said final decree to the Supreme Court of the United States, and offer such good and sufficient security for costs as, by law in such cases, is required. Wherefore, your petitioners pray that their said new appeal may be allowed, and that the same, with a transcript of the record in the above cause, may be certified to the said Supreme Court, that the said decree, if found to be erroneous by the said Supreme Court, may be reversed, and that

such other order or decree may be made therein as shall be agreeable to equity and good conscience; and that these appellants may be fully restored to all which they have lost by reason of said decree; and that a citation, in due form of law, signed by one of the judges of this honorable court, may be issued, to be served on the appellees or their attorney of record, to appear and answer to said appeal in said Supreme Court at the next term thereof, to be holden in Washington, on the first Monday of December, 1852.

WILLIAM LIVINGS'TON,
E. *W.* CALEF, by
WM. LIVINGSTON.

This petition was entered at the present term of this court, when, upon a hearing of the same, and the premises being seen and fully understood by the court, the prayer of said petition was allowed.

Thereupon a citation was issued, as follows, to wit:

UNITED STATES OF AMERICA,
Massachusetts district, ss.

To William W. Woodworth, of Hyde Park, in the northern district of New York, James G. Wilson, of the city of Philadelphia, in the eastern district of Pennsylvania, and Artemas L. Brooks and Ignatius Tyler, of the city of Lowell, in the county of Middlesex, and Commonwealth of Massachusetts, greeting:

Whereas, the circuit court of the United States, for the first circuit and district of Massachusetts, on the tenth day of July, A. D. 1851, made a final decree in a certain cause in equity then pending therein, between you, as plaintiffs, and William Livingston and Ebenezer N. Calef, of said Lowell, as defendants, from which decree said defendants have appealed to the Supreme Court of the United States, and filed security as by law required; and said appeal has been allowed by the court.

Now, therefore, you are hereby notified of said appeal and the allowance thereof, and you are hereby cited to appear, if you see cause, at the said Supreme Court next to be holden at Washington, on the first Monday of December, A. D. 1852, to make answer thereto.

Given under my hand and seal, this twentieth day of October, A. D. 1852.

[L. S.]

PELEG SPRAGUE,
Judge of the U. S., for the district of Mass.

Thereupon the marshal made his return, as follows, to wit:

BOSTON, *October* 21, 1852.

UNITED STATES OF AMERICA,
Massachusetts district, ss.

I hereby certify, that I have notified the within named W. W. Woodworth, Wilson, Brooks, and Tyler, by giving in hand to C. P. Curtis, esq., their attorney of record, a true and attested copy hereof.

J. H. RILEY,
Deputy U. S. marshal, Mass. district.

Service - - - -	$2 00
Copy - - - -	1 00
Travel 440 miles to Washington, D. C. - -	22 00
	$25 00

UNITED STATES OF AMERICA,
Massachusetts district, ss.

I, Isaac O. Barnes, clerk of the circuit court of the United States, for the first circuit, Massachusetts district, do hereby certify, that the foregoing is a true copy of the petition of William Livingston and al., and all proceedings thereon, in the case of William W. Woodworth and als., in equity, versus William Livingston and al.

In testimony whereof I have hereunto subscribed my name, and affixed the seal of the said court, at Boston, this twenty-seventh day of October, A. D. 1852, and in the seventy-seventh year of the independence of the United States of America.

[L. S.]

ISAAC O. BARNES, *Clerk.*